

Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

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SUMMONS ISSUED

Attorneys for Plaintiff Maria Smeby,
the Putative Class, and all Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

MARIA SMEBY, individually, on behalf of
herself, those similarly situated, and all
Aggrieved Employees,

Plaintiff,

vs.

SEATEL, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: C22-01360

CLASS AND REPRESENTATIVE ACTION

COMPLAINT FOR:

1. Failure to Provide Meal Periods (Labor Code § 226.7, IWC Wage Order 1);
2. Failure to Pay All Unused Vested Vacation Time Upon Separation (Labor Code § 227.3);
3. Failure to Pay Final Wages Due Upon Separation (Labor Code §§ 201, 202, and 203);
4. Failure to Provide Accurate Itemized Wage Statements (California Labor Code § 226(a), IWC Wage Order 1);
5. Unfair Competition (Business & Professions Code §§ 17200, et seq.);
6. Civil Penalties Pursuant to Private Attorneys General Act 2004 (Labor Code § 2698, et seq.); and
7. Failure to Provide Employment Records (Labor Code §§ 226(e) and 1198.5).

DEMAND FOR JURY TRIAL

1 Plaintiff MARIA SMEBY (“Plaintiff”) on behalf of herself, and on behalf of those
2 similarly situated current and former employees, files this Complaint against SEATEL, INC., a
3 California limited liability company (“Seatel”); and DOES 1 through 100, inclusive
4 (“Defendants”). Plaintiff alleges and avers as follows:

5 **JURISDICTION AND VENUE**

6 1. This class action Complaint is brought pursuant to California Code of Civil
7 Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the
8 minimal jurisdiction limits of the Superior Court and will be established according to proof at
9 trial.

10 2. This Court has jurisdiction over this action pursuant to the California
11 Constitution, Article VI, section 10, which grants the Superior Court “original jurisdiction in all
12 causes except those given by statute to other courts.” The statutes under which this action is
13 brought do not specify any other basis for jurisdiction.

14 3. This Court has jurisdiction over all Defendants because each Defendant is either a
15 citizen of California, has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 4. Venue is proper in this Court because, upon information and belief, the named
19 Defendants reside, transact business, or have offices in this county and the acts and omissions
20 alleged herein took place in this county.

21 **PARTIES**

22 5. At all times herein relevant, Plaintiff was a resident of the State of California, in
23 the County of Contra Costa.

24 6. Defendant Seatel is a California corporation, and transacts business throughout
25 the State of California, including in the County of Santa Clara.

26 7. The true names and capacities, whether corporate, associate, individual or
27 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
28 Defendants by such fictitious names. Plaintiff is informed and believes, and based on that

1 information and belief alleges, that each of the Defendants designated as a Doe is legally
2 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
3 the injuries and damages to Plaintiff alleged in this Complaint. Plaintiff will seek leave of court
4 to amend this Complaint to show the true names and capacities when the same have been
5 ascertained.

6 **FACTUAL ALLEGATIONS**

7 8. Defendants employed Plaintiff as a non-exempt, hourly-paid employee from
8 approximately November 2007, through approximately December 2021, in the State of
9 California, County of Contra Costa.

10 9. Defendants had the authority to hire and terminate Plaintiff, the other class
11 members, and all aggrieved employees; to set work rules and conditions governing Plaintiff, the
12 other class members, and all aggrieved employees; and to supervise their daily employment
13 activities.

14 10. Defendants directly hired and paid wages and benefits to Plaintiff, the other class
15 members, and all aggrieved employees.

16 11. Plaintiff is informed and believes, and based thereon alleges that, at all material
17 times set forth herein, Defendants engaged in a uniform policy and systematic scheme of wage
18 abuse against their hourly paid employees.

19 12. Plaintiff is informed and believes, and based thereon alleges, that at all material
20 times set forth herein, Defendants knew or should have known that they had a duty to
21 compensate Plaintiff, the other class members, and all aggrieved employees pursuant to
22 California law.

23 13. Plaintiff is informed and believes, and based thereon alleges, that at all material
24 times set forth herein, Defendants failed to comply with the applicable provisions of the Labor
25 Code and IWC Wage Order 1 requiring Defendants to provide non-exempt employees with
26 legally compliant meal periods. Among other things, Defendants failed to provide non-exempt
27 employees with at least a 30-minute duty-free meal period before the end of their fifth (5th) hour
28 of work when working more than six (6) hours in a workday, and a second 30-minute duty-free

1 meal period before the end of their tenth (10th) hour of work when working more than ten (10)
2 hours in a workday.

3 14. Plaintiff, the other class members, and all aggrieved employees were generally
4 scheduled to begin their shift at 5:00 a.m. and were scheduled to end their shift at 1:30 p.m.
5 Thus, Plaintiff, the other class members, and all aggrieved employees were entitled to receive
6 one off-duty meal period of no less than 30 minutes in duration **starting no later than 10:00**
7 **a.m.**, i.e., before the **end of their 5th hour of work**. However, Plaintiff, the other class
8 members, and all aggrieved employees were not provided meal periods until 11:00 a.m. – one
9 hour beyond the statutory requirement for timely breaks.

10 15. Plaintiff and the other class members are entitled to receive payment of one
11 additional hour of pay at Plaintiff's and the other class members' regular rate of pay for each day
12 that Defendants failed to provide a legally compliant meal period. Defendant failed to pay
13 Plaintiff, the other class members, and all aggrieved employees this extra hour of pay for each
14 day that Plaintiff, the other class members, and all aggrieved employees did not receive a timely
15 meal period.

16 16. Plaintiff is informed and believes, and based thereon alleges, that at all material
17 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
18 members, and all aggrieved employees were entitled to receive all wages due to them, within the
19 applicable pay periods required under California Labor Code section 204 and that Defendants
20 regularly and consistently failed to pay Plaintiff, the other class members, and all aggrieved
21 employees all wages due to them within the applicable pay periods required under California
22 Labor Code section 204.

23 17. Plaintiff is informed and believes, and based thereon alleges, that at all material
24 times set forth herein, Defendants provided Plaintiff, the other class members, and all aggrieved
25 employees "floating holidays" as a benefit of their employment. Although these floating holidays
26 were the functional equivalent of vacation days, Defendants failed to comply with California law
27 with respect to vacation pay, including California's prohibition on use-it-or-lose-it vacation
28 policies and the requirement that all unused vacation days be paid at the time of separation.

1 18. Plaintiff is informed and believes, and based thereon alleges, that at all material
2 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
3 members, and all aggrieved employees were entitled to receive all wages owed to them upon
4 discharge or resignation and that Defendants regularly, consistently, and willfully failed to pay
5 Plaintiff, the other class members, and all aggrieved employees all wages owed to them upon
6 discharge or resignation.

7 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff, the other class members, and all aggrieved employees
9 were entitled to receive complete and accurate wage statements in accordance with California
10 law.

11 20. At all material times set forth herein, Defendants regularly and consistently failed
12 to provide complete and accurate wage statements to Plaintiff, the other class members, and all
13 aggrieved employees. Among other things, Defendants failed to pay premium pay wages for
14 meal period violations and failed to pay unused vacation pay at the time of separation.

15 21. Defendants have common policies and practices that apply to all non-exempt,
16 hourly employees working in the State of California. These common policies and practices result
17 in the legal violations described herein, making such claims susceptible to common proof and
18 adjudication.

19 22. For example, Defendants have utilized the following policies and practices for
20 their employees throughout the State of California during the relevant time periods:

- 21 a. Failing to provide legally compliant meal periods;
- 22 b. Failing to pay meal period premiums for meal period violations;
- 23 c. Failing to pay unused vacation upon separation from employment;
- 24 d. Failing to accurately report on wage statements meal period premiums
25 due;
- 26 e. Failing to accurately report on wage statements payment of unused
27 vacation due upon separation from employment; and
- 28 f. Failing to timely pay non-exempt employees all wages due upon

1 separation from their employment.

2 **CLASS ACTION ALLEGATIONS**

3 23. Plaintiff brings this action on her own behalf and on behalf of all other current
4 and former employees of Defendants similarly situated, and thus, seeks class certification under
5 Code of Civil Procedure section 382.

6 24. The proposed class is defined as follows:

7 **All current and former hourly-paid or non-exempt employees**
8 **employed by Defendants within the State of California at any time**
9 **during the period from four (4) years prior to the filing of this action,**
10 **plus any additional time during which the statutes of limitation for the**
11 **causes of action herein were tolled pursuant to Emergency Rule 9 of**
12 **the California Rules of Court, the ‘Emergency Rules Related to**
13 **COVID-19, through final judgment (the “Putative Class Members”).**

14 25. Plaintiff reserves the right to establish subclasses as appropriate.

15 26. The class is ascertainable and there is a well-defined community of interest in the
16 litigation:

- 17 a. The Putative Class Members are so numerous that joinder of all class
18 members is impracticable. The membership of the entire Putative Class is
19 unknown to Plaintiff at this time; however, the class is estimated to be
20 approximately 200 individuals and the identity of such membership is
21 readily ascertainable by inspection of Defendants’ employment records.
- 22 b. Plaintiff’s claims are typical of all other Putative Class Members’ claims,
23 as demonstrated herein. Plaintiff will fairly and adequately protect the
24 interests of the other Putative Class Members with whom they have a
25 well-defined community of interest.
- 26 c. Plaintiff will fairly and adequately protect the interests of each Putative
27 Class Member, with whom they have a well-defined community of
28 interest and typicality of claims, as demonstrated herein. Plaintiff has no

1 interest that is antagonistic to the other Putative Class Members. Plaintiff's
2 attorneys, the proposed Class Counsel, are highly experienced attorneys in
3 wage and hour, representative, and class action litigation and are versed in
4 the rules governing class action discovery, certification, settlement, and
5 trial. Plaintiff has incurred, and during the pendency of this action will
6 continue to incur, costs and attorney's fees, that have been, are, and will
7 be necessarily expended for the prosecution of this action for the
8 substantial benefit of each Putative Class Member.

9 d. A class action is superior to other available methods for the fair and
10 efficient adjudication of this litigation because individual joinder of all
11 Putative Class Members is impractical.

12 e. Certification of this lawsuit as a class action will advance public policy
13 objectives. Employers of this great state violate employment and labor
14 laws every day. Current employees are often afraid to assert their rights
15 out of fear of direct or indirect retaliation. However, class actions provide
16 the class members who are not named in the complaint anonymity that
17 allows for the vindication of their rights.

18 27. There are common questions of law and fact as to the Putative Class Members
19 that predominate over questions affecting only individual members. The following common
20 questions of law or fact, among others, exists as to the members of the class:

21 a. Whether Defendants deprived Plaintiff and the other Putative Class
22 Members of legally compliant meal periods;

23 b. Whether Defendants failed to pay Plaintiff and the other Putative Class
24 Members meal period premium pay for each day that a meal period
25 violation occurred;

26 c. Whether Defendants failed to pay Plaintiff and the other Putative Class
27 Members their unused vacation pay upon separation from their
28 employment;

- 1 d. Whether Defendants failed to pay all wages due to Plaintiff and the other
2 Putative Class Members within the required time upon their separation
3 from their employment;
4 e. Whether Defendants failed to provide Plaintiff and the other Putative
5 Class Members accurate itemized wage statements;
6 f. Whether Defendants' conduct was willful;
7 g. Whether Defendants engaged in unfair business practices in violation of
8 California Business & Professions Code sections 17200 et seq.;
9 h. The appropriate amount of damages, restitution, and/or monetary penalties
10 resulting from Defendants' violation of California law; and
11 i. Whether Plaintiff and the other Putative Class Members are entitled to
12 compensatory damages, penalties, injunctive relief, restitution pursuant to
13 the California Labor Code and UCL, and attorneys' fees and costs.

14 **PRIVATE ATTORNEYS GENERAL ACT 2004 "PAGA" ALLEGATIONS**

15 28. At all times herein set forth, the California Labor Code Private Attorneys General
16 Act of 2004, Labor Code §2698, et seq. (hereinafter "PAGA") was applicable to Plaintiff and all
17 aggrieved employees throughout their employment with Defendants.

18 29. At all times herein set forth, PAGA provides that any provision of law under the
19 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency (hereinafter "LWDA") for violations of the California
21 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
22 employee on behalf of herself and other current or former employees pursuant to procedures
23 outlined in California Labor Code section 2699.3.

24 30. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
25 employee," who is any person that was employed by the alleged violator and against whom one
26 or more of the alleged violations was committed.

27 31. Plaintiff was employed by Defendants and the alleged violations were committed
28 against her and other aggrieved employees during their time of employment. Plaintiff and the

1 other aggrieved employees worked for Defendants in California as non-exempt or hourly
2 employees during the relevant time period. Thus, Plaintiff is an “aggrieved employee” as defined
3 by California Labor Code section 2699, subdivision (c).

4 32. For purposes of this Complaint, the “Aggrieved Employees” are defined as:

5 **All current and former hourly-paid or non-exempt employees employed**
6 **by Defendants within the State of California at any time from April 25,**
7 **2021, plus any additional time during which the statutes of limitation for**
8 **the causes of action herein were tolled pursuant to Emergency Rule 9 of**
9 **the California Rules of Court, the ‘Emergency Rules Related to COVID-**
10 **19, through final judgment.**

11 33. On April 25, 2022, pursuant to Labor Code § 2699.3, Plaintiff filed notice with
12 California’s Labor and Workforce Development Agency (“LWDA”) and posted by certified mail
13 to Defendants notice of the specific provisions of the Labor Code that have been violated,
14 including the facts and theories to support the violations.

15 34. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
16 claims within sixty-five (65) days.

17 35. Thus, Plaintiff has exhausted administrative remedies under PAGA’s Labor Code
18 § 2699.3(a)(2)(A) and may pursue civil PAGA penalties in a representative capacity for
19 Defendants’ violations of the California Labor Code and Wage Order 1-2001.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **(Violation of California Labor Code § 226.7 and IWC Wage Order 1)**

23 **(On Behalf of Plaintiff and the Putative Class Members,**

24 **Against All Defendants and DOES 1 through 100)**

25 36. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
26 paragraphs.

27 37. At all relevant times, the IWC Wage Order 1 and California Labor Code section
28 226.7, subdivision (a) was applicable to the employment by Defendants of Plaintiff and all other

1 Putative Class Members and Aggrieved Employees.

2 38. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any meal period mandated by an applicable
4 order of the California IWC.

5 39. At all relevant times, the applicable IWC Wage Order 1 provides that an employer
6 may not require, cause or permit an employee to work for a work period of more than five (5)
7 hours per day without providing the employee with a meal period of not less than thirty (30)
8 minutes, except that if the total work period per day of the employee is no more than six (6)
9 hours, the meal period may be waived by mutual consent of both the employer and employee.

10 40. During the relevant time period, Plaintiff and the other Putative Class Members
11 and Aggrieved Employees who were scheduled to work for a period of time no longer than six
12 (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
13 required to work for periods longer than five (5) hours without a legally compliant meal period
14 of not less than thirty (30) minutes.

15 41. During the relevant time period, Plaintiff and the other Putative Class Members
16 and Aggrieved Employees who were scheduled to work for a period of time in excess of six (6)
17 hours were required to work for periods longer than five (5) hours without a legally compliant
18 first meal period of not less than thirty (30) minutes, and without a second meal period of not
19 less than thirty (30) minutes when working more than ten (10) hours.

20 42. During the relevant time period, Defendants intentionally and willfully failed to
21 provide Plaintiff and the other Putative Class Members and Aggrieved Employees with meal
22 periods within the legally required timeframes, if at all, and failed to compensate Plaintiff, all
23 members of the putative class, and all aggrieved employees with meal period premiums for
24 missed or untimely meal periods.

25 43. Defendants' conduct violates IWC Wage Order 1 and California Labor Code
26 section 226.7.

27 44. During the relevant time period, Defendants failed to pay Plaintiff and the other
28 Putative Class Members and Aggrieved Employees meal period premiums due pursuant to

1 California Labor Code section 226.7(b).

2 45. Pursuant to IWC Wage Order 1 and California Labor Code section 226.7
3 subdivision (b), Plaintiff and all members of the putative class are entitled to recover from
4 Defendants one additional hour of pay at the employee's regular rate of compensation for each
5 workday that a legally compliant meal period was not provided.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL UNUSED VESTED VACATION TIME**

8 **UPON SEPARATION FROM EMPLOYMENT**

9 **(Violation of California Labor Code § 227.3)**

10 **(On Behalf of Plaintiff and the Putative Class Members,**

11 **Against All Defendants and DOES 1 through 100)**

12 46. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
13 paragraphs.

14 47. Pursuant to Labor Code § 227.3, "whenever a contract of employment or
15 employer policy provides for paid vacations, and an employee is terminated without having
16 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final
17 rate in accordance with such contract of employment or employer policy respecting eligibility or
18 time served . . ."

19 48. Defendants provided Plaintiff and the other Putative Class Members and
20 Aggrieved Employees with "floating holidays." Although these floating holidays were the
21 functional equivalent of vacation days, Defendants failed to comply with California law with
22 respect to vacation pay, including California's prohibition on use-it-or-lose-it vacation policies
23 and the requirement that all unused vacation days be paid at the time of separation.

24 49. Defendants' conduct violates California Labor Code section 227.3.

25 50. Pursuant to California Labor Code section 227, Plaintiff and the other Putative
26 Class Members are entitled to recover from Defendants all uncompensated vested vacation time.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY FINAL WAGES DUE UPON SEPARATION**

3 **(Violation of California Labor Code §§ 201, 202, and 203)**

4 **(On Behalf of Plaintiff and the Putative Class Members,**

5 **Against All Defendants and DOES 1 through 100)**

6 51. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
7 paragraphs.

8 52. Pursuant to California Labor Code sections 201 and 202, if an employer
9 discharges an employee, the wages earned and unpaid at the time of discharge are due and
10 payable immediately, and if an employee quits his or her employment, his or her wages shall
11 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
12 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
13 employee is entitled to his or her wages at the time of quitting.

14 53. During the relevant time period, Defendants intentionally and willfully failed to
15 pay Plaintiff and the other Putative Class Members and Aggrieved Employees their wages,
16 earned and unpaid, upon termination or within seventy-two (72) hours of them leaving
17 Defendants' employ.

18 54. These earned and unpaid wages to Plaintiff and the other Putative Class Members
19 and Aggrieved Employees included, without limitation, meal period premium pay for meal
20 period violations, and vested vacation pay.

21 55. Defendants' failure to pay Plaintiff and the other Putative Class Members and
22 Aggrieved Employees their wages, earned and unpaid, either upon their termination or within
23 seventy-two (72) hours of them leaving Defendants' employ, is in violation of California Labor
24 Code sections 201 and 202.

25 56. Pursuant to California Labor Code section 203, if an employer willfully fails to
26 pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an
27 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
28 from the due date thereof at the same rate until paid or until an action is commenced; but the

1 wages shall not continue for more than thirty (30) days.

2 57. Plaintiff and the other Putative Class Members are entitled to recover the statutory
3 penalty for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days
4 maximum pursuant to California Labor Code section 203.

5 **FOURTH CAUSE OF ACTION**

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

7 **(Violation of California Labor Code § 226(a) and IWC Wage Order 1)**

8 **(On Behalf of Plaintiff and the Putative Class Members,**

9 **Against All Defendants and DOES 1 through 100)**

10 58. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
11 paragraphs.

12 59. Pursuant to California Labor Code section 226, subdivision (a), every employer
13 shall furnish each of his or her employees an accurate itemized statement in writing showing: (1)
14 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
18 which the employee is paid, (7) the name of the employee and his or her social security number,
19 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
20 rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by the employee. The deductions made from payments of wages shall be recorded in
22 ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the
23 statement or a record of the deductions shall be kept on file by the employer for at least three
24 years at the place of employment or at a central location within the State of California.

25 60. Defendants intentionally and willfully failed to provide Plaintiff and the other
26 Putative Class Members and Aggrieved Employees with complete and accurate itemized wage
27 statements. The deficiencies included one or more of the following: the failure to include meal
28 period premium pay for meal period violations, and failure to include pay for vested vacation

upon separation from employment.

61. Defendants' violation of California Labor Code section 226, subdivision (a), caused Plaintiff and the other Putative Class Members and Aggrieved Employees to experience actual injury because it: (1) resulted in the nonpayment of wages; (2) deprived Plaintiff and the other Putative Class Members and Aggrieved Employees of the information necessary to identify discrepancies in Defendants' reported data; (3) created confusion over whether they received all wages owed to them; (4) created difficulty and expense involved in reconstructing pay records; (5) forced Plaintiff and the other Putative Class Members and Aggrieved Employees to make mathematical computations to analyze whether the wages paid in fact properly compensated them; and (6) forced Plaintiff and the other Putative Class Members and Aggrieved Employees to incur legal fees and costs in order to determine whether they had been fully and timely paid for all hours worked.

62. Pursuant to California Labor Code section 226(e)(1), Plaintiff and the other Putative Class Members are entitled to recover penalties, costs, and attorney's fees.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(Violation of California Business & Professions Code §§ 17200 et seq.)

(On Behalf of Plaintiff and the Putative Class Members,

Against All Defendants and DOES 1 through 100)

63. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

64. Defendants, and each of them, are “persons” as defined by Business and Professions Code § 17201.

65. Defendants' conduct, as alleged in this Complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and the other Putative Class Members and Aggrieved Employees, and Defendants' competitors. Accordingly, Plaintiff and the other Putative Class Members and Aggrieved Employees seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

1 66. A violation of California Business & Professions Code sections 17200, et seq.
2 may be predicated on the violation of any state or federal law.

3 67. Defendants' activities as alleged herein are violations of California law, and
4 constitute unlawful business acts and practices in violation of California Business & Professions
5 Code sections 17200, et seq.

6 68. Defendants have previously or continue to engage in unlawful, unfair, and/or
7 fraudulent business practices in violation of California Business and Professions Code § 17200,
8 et seq., by, *inter alia*:

- 9 a. Failing to provide legally compliant meal periods to Plaintiff and the other
10 Putative Class Members and Aggrieved Employees;
- 11 b. Failing to pay Plaintiff and the other Putative Class Members and
12 Aggrieved Employees meal period premium pay for meal period
13 violations;
- 14 c. Failing to pay Plaintiff and the other Putative Class Members and
15 Aggrieved Employees all unused vested vacation pay upon separation
16 from their employment;
- 17 d. Failing to timely pay Plaintiff and the other Putative Class Members and
18 Aggrieved Employees all wages due upon separation from their
19 employment;
- 20 e. Failing to accurately report on Plaintiff's and the other Putative Class
21 Members' and Aggrieved Employees' wage statements meal period
22 premiums for each day that a meal period violation occurred, and failing
23 to report payment of unused vested vacation pay upon separation from
24 their employment.

25 69. Defendants, and each of them, have profited from these unlawful, unfair, and
26 fraudulent business practices at the expense of Plaintiff and the other Putative Class Members
27 and Aggrieved Employees, and at the expense of law-abiding businesses and the public.

28 70. As a direct and proximate result of Defendants' unfair and unlawful business

1 practices as alleged herein, Plaintiff and the other Putative Class Members and Aggrieved
2 Employees have sustained injury and damages, in amounts to be proven at trial.

3 71. Defendants, and each of them, should therefore be ordered to immediately cease
4 from engaging in the unlawful, unfair, and fraudulent conduct alleged herein, and restore as
5 restitution to Plaintiff and all members of the putative class those amounts accrued during the
6 relevant claim period, and not otherwise awarded in connection with the previous causes of
7 action.

8 72. Plaintiff and the other Putative Class Members seek restitution of wages from all
9 Defendants in an amount to be proven at trial, and an injunction prohibiting Defendants from
10 engaging in the unlawful, unfair, and fraudulent conduct alleged herein.

11 73. In addition, Defendants are liable to Plaintiff and the other Putative Class
12 Members for reasonable attorney's fees and costs, which are respectfully requested, in an amount
13 to be proven according to law.

14 **SIXTH CAUSE OF ACTION**

15 **CIVIL PENALTIES PURSUANT TO**

16 **PRIVATE ATTORNEYS GENERAL ACT 2004 ("PAGA")**

17 **(Violation of California Labor Code §§ 2698, et seq.)**

18 **(On Behalf of Plaintiff and the Aggrieved Employees,**

19 **Against All Defendants and DOES 1 through 100)**

20 74. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
21 paragraphs.

22 75. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, et seq.)
23 ("PAGA") expressly establishes that any provision of the California Labor Code which provides
24 for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
25 divisions, commissions, boards, agencies or employees for a violation of the California Labor
26 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
27 herself or herself, and other current or former employees.

28 76. Plaintiff and the other Aggrieved Employees are "aggrieved employees" as

1 defined by California Labor Code section 2699, subdivision (c) in that they are all current or
2 former employees of Defendants, and one or more of the alleged violations were committed
3 against them.

4 77. Pursuant to California Labor Code section 2699, Plaintiff, in a representative
5 capacity on behalf of all Aggrieved Employees, requests and is entitled to recover from
6 Defendants and each of them, civil penalties according to proof, interest, attorneys' fees and
7 costs.

8 78. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
9 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to
10 the Labor and Workforce Development Agency for the enforcement of labor laws and education
11 of employers and employees about their rights and responsibilities and twenty-five percent
12 (25%) to the aggrieved employees.

13 79. As described in greater detail *supra*, at all times relevant to this action,
14 Defendants devised, formulated, implemented, and enforced, the following policies and
15 procedures in violation of California Law, including but not limited to the provisions of the
16 California Labor Code and Industrial Welfare Commission ("IWC") Wage Order 1, which give
17 rise to PAGA civil penalties under Cal. Lab. Code § 2698, *et seq.*:

18 **Civil Penalties for Failure to Provide Meal Periods**

19 80. Through their policies and practices, Defendants failed to provide legally
20 compliant meal periods in violation of the Wage Order 1 and California Labor Code section
21 226.7 and California Labor Code section 512.

22 **Civil Penalties for Failure to Pay All Unused Vested Vacation Time Upon**
23 **Termination From Employment**

24 81. Through their policies and practices, Defendants provided Plaintiff and the
25 Aggrieved Employees with "floating holidays." Although these floating holidays were the
26 functional equivalent of vacation days, Defendants failed to comply with California law with
27 respect to vacation pay, including California's prohibition on use-it-or-lose-it vacation policies
28 and the requirement that all unused vacation days be paid at the time of separation, in violation

1 of California Labor Code section 227.3.

2 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

3 82. Through their policies and practices, Defendants failed to timely pay Plaintiff and
4 the Aggrieved Employees all wages due upon separation from their employment in violation of
5 California Labor Code sections 201, 202, and 203.

6 83. Further, even though Defendants failed to timely pay employees all wages due
7 upon separation, Defendants also failed to pay Plaintiff and the Aggrieved Employees
8 continuing wages under Labor Code section 203.

9 **Civil Penalties for Failure to Timely Pay Wages During Employment**

10 84. Through their policies and practices, Defendants intentionally and willfully failed
11 to pay Plaintiff and the Aggrieved Employees all wages due to them within the specific pay
12 periods required under California Labor Code section 204.

13 85. For example, in violation of Labor Code section 204(b)(1), Defendants did not
14 pay meal period premium pay “no later than the payday for the next regular payroll period.”

15 **Civil Penalties for Failure to Provide Compliant Wage Statements**

16 86. Through their policies and practices, Defendants failed to provide Plaintiff and the
17 Aggrieved Employees compliant wage statements in violation of California Labor Code section
18 226, subdivision (a).

19 **Civil Penalties for Failure to Keep Complete and Accurate Payroll Records**

20 87. Through their policies and practices, Defendants failed to keep complete and
21 accurate payroll records in violation of California Labor Code section 1174(d). Among other
22 violations, Defendants failed to record payment of meal period premium pay for Plaintiff and the
23 Aggrieved Employees.

24 **Civil Penalties for Violations of IWC Wage Order 1**

25 88. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary
26 fine, for employers that, among other things, violate the provisions of the IWC Wage Orders. As
27 described herein, Defendant violated the Wage Order 1 in many respects, including without
28 limitation the failure to provide legally compliant meal periods.

1 **Exhaustion of Administrative Remedies under PAGA**

2 89. On April 25, 2022, pursuant to Labor Code § 2699.3, Plaintiff filed notice with
3 California’s Labor and Workforce Development Agency (“LWDA”) and posted by certified mail
4 to Defendants notice of the specific provisions of the Labor Code that have been violated,
5 including the facts and theories to support the violations.

6 90. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
7 claims within sixty-five (65) days.

8 91. Thus, Plaintiff has exhausted administrative remedies under PAGA’s Labor Code
9 § 2699.3(a)(2)(A).

10 92. Pursuant to Labor Code Section 2698 et seq., Plaintiff, in a representative
11 capacity, is entitled to recover civil penalties in connection with herself, and in connection with
12 each and every Aggrieved Employee of Defendants, for each and every pay period in which a
13 Labor Code violation or applicable IWC Wage Order violation occurred, in an amount according
14 to proof at trial.

15 93. Plaintiff and all aggrieved employees are also entitled to reasonable attorney’s
16 fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are
17 respectfully requested, in an amount according to proof at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE EMPLOYMENT RECORDS**

20 **(Violation of California Labor Code §§ 226(f) and 1198.5(k))**

21 **(On Behalf of Plaintiff Individually Against All Defendants and DOES 1 through 100)**

22 94. Plaintiff re-alleges and incorporates into this cause of action each of the
23 preceding paragraphs.

24 95. On April 20, 2022, Plaintiff’s legal counsel made a written request to Defendant
25 Seatel for employment records pursuant to Labor Code §§226(b) and 1198.5. This request was
26 sent to Seatel via U.S. Certified Mail, at the address listed on Plaintiff’s wage statements, as
27 well as the address registered with the California Secretary of State.

96. Pursuant to Labor Code §§226(b) and 1198.5, these records were due within 21 and 30 days of the request, respectively. To date, Seatel has not provided any of the responsive records.

97. Pursuant to Labor Code §226(f), Plaintiff is entitled to receive a penalty in the sum of \$750.00 due to Defendants' failure to timely respond to Plaintiff's request for employment records within 21 days of such request pursuant to Labor Code §226(c).

98. Pursuant to Labor Code §1198.5(k), Plaintiff is also entitled to receive a second penalty in the sum of \$750.00 for failure to timely respond to this request within 30 days.

99. Plaintiff is entitled to reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proved according to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, on behalf of the putative class, all aggrieved employees, and on behalf of all other members of the general public similarly situated, jointly and severally, pray as follows:

CLASS CERTIFICATION

1. That this action be certified as a Class Action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

AS TO THE FIRST CAUSE OF ACTION

4. That the court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 512 and IWC Wage Order 1 by willfully failing to provide legally compliant meal periods to Plaintiff and the other Putative Class Members;
5. For compensation for meal periods not provided pursuant to Labor Code § 226.7(b) in an amount to be proven at trial;
6. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and
7. For such other and further relief as the court may deem just and proper.

AS TO THE SECOND CAUSE OF ACTION

1 8. That the court declare, adjudge and decree that Defendants violated California
2 Labor Code section 227.3 by failing to pay Plaintiff and the other Putative Class Members all
3 unused vested vacation time upon separation from their employment;

4 9. For compensation for all unused vested vacation time due and owing in an
5 amount to be proven at trial;

6 10. For pre-judgment interest on any unpaid compensation from the date such
7 amounts were due; and

8 11. For such other and further relief as the court may deem just and proper.

9 **AS TO THE THIRD CAUSE OF ACTION**

10 12. That the court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201, 202, and 203 by willfully failing to timely pay all compensation owed
12 to Plaintiff and the other Putative Class Members no longer employed by Defendants, at the time
13 of separation from their employment;

14 13. For statutory wage penalties pursuant to California Labor Code section 203 for
15 Plaintiff and all other Putative Class Members who have left Defendants' employ;

16 14. For pre-judgment interest on any unpaid compensation from the date such
17 amounts were due; and

18 15. For such other and further relief as the court may deem just and proper.

19 **AS TO THE FOURTH CAUSE OF ACTION**

20 16. That the court declare, adjudge and decree that Defendants violated the record-
21 keeping provisions of California Labor Code section 226, subdivision (a) and IWC Wage Order
22 1 as to Plaintiff and the other Putative Class Members, and willfully failed to provide accurate
23 itemized wage statements thereto;

24 17. For statutory wage penalties for Plaintiff and the other Putative Class Members
25 pursuant to California Labor Code section 226 (e);

26 18. For reasonable attorneys' fees, costs, and interest; and

27 19. For such other and further relief as the court may deem just and proper.

1 **AS TO THE FIFTH CAUSE OF ACTION**

2 20. For restitution of unpaid wages to Plaintiff and the other Putative Class Members
3 and all pre-judgment interest from the day such amounts were due and payable;

4 21. For the appointment of a receiver to receive, manage and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of their violation of California Business and Professions Code sections
7 17200, et seq.;

8 22. For injunctive relief and an order enjoining Defendants from engaging in further
9 unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 et
10 seq.;

11 23. For reasonable attorneys' fees and costs of suit incurred herein; and

12 24. For such other and further relief as the court may deem just and proper.

13 **AS TO THE SIXTH CAUSE OF ACTION**

14 25. For civil penalties, attorney's fees, and costs pursuant to California Labor Code
15 sections 2698 et seq.; and

16 26. For such other and further relief as the court may deem just and proper.

17 **AS TO THE SEVENTH CAUSE OF ACTION**

18 27. For the penalty specified in Labor Code § 226(f) in the sum of \$750;

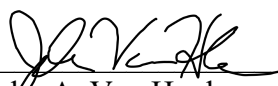
19 28. For the penalty specified in Labor Code § 1198.5(f) in the sum of \$750;

20 29. For attorneys' fees, costs, and interest; and

21 30. For such other and further relief as the court may deem just and proper.

22
23 Dated: June 30, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

24
25 
26 John A. Van Hook
27 Adrian C. Byrne
28 Attorneys for Plaintiff Maria Smeby, the
Putative Class Members, and the Aggrieved
Employees

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Dated: June 30, 2022

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CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL