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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

SUSANA CALDERON, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

PRUDENTIAL INS CO OF AMERICA, a
 New Jersey Corporation; and DOES 1
 through 20, inclusive;

Defendants.

Case No.:

COMPLAINT 22STCV13172

CLASS ACTION COMPLAINT

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

PAGA CLAIMS

- (7) PAGA Assessment for Failure to Pay Minimum Wages;
- (8) PAGA Assessment for Failure to Pay Overtime Wages;
- (9) PAGA Assessment for Failure to Provide Meal Periods;
- (10) PAGA Assessment for Failure to Timely Pay Wages;
- (11) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements
- (12) Failure to Maintain Employment Records.

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her employer, Defendants Prudential Ins Co of
5 America, and DOES 1 through 20, (collectively, the “Defendants”) on behalf of all current and
6 former non-exempt employees employed by Defendants in California (hereinafter, the “Class” or
7 “Represented Employees”), for California Labor Code violations stemming from Defendants’
8 failure to pay all wages owed, including minimum, regular, overtime wages, failure to provide
9 meal periods, failure to provide rest breaks, failure to timely pay wages, failure to provide
10 accurate itemized wage statements, and failure to maintain employment records.

11 2. Plaintiff Calderon began working for Defendants as a non-exempt customer
12 service representatives on approximately January 18, 2022.

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

16 4. At all relevant times, Plaintiff was not provided proper minimum and overtime
17 wages due to Defendants’ failure to accurately compensate for all hours worked. For example,
18 Plaintiff and the Represented Employees were customer service representatives who were
19 assigned to work at their house and required to perform pre and post shift work, including but not
20 limited to preparing schedules for the following day, performing computer work and other tasks
21 off-the-clock, leading to a failure to pay proper minimum, regular, and overtime wages.

22 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
23 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
24 the Represented Employees were subjected to meal period violations when they were: (1)
25 scheduled to take lunch after the 5th hours but their entered meal period time was later
26 fraudulently changed to reflect that meal periods were taken prior to the 5th hour , (2) unable to
27 take a meal period due to workload, and (3) not provided mandated second or third meal periods
28 on shifts in excess of 10 hours or 15 hours, respectively. Specifically, Plaintiff and the

1 Represented Employees were expected to take customer service calls up through the minute
2 before their lunch was scheduled lunch period, which resulted in meal periods that were not
3 taken at the scheduled times often resulting in late or otherwise noncompliant meal periods. On
4 some occasions, the meal periods were scheduled after the 5th hour. Moreover, Defendants
5 would adjust the meal period time records to avoid paying premiums on noncompliant meal
6 periods.

7 6. Plaintiff further alleges that Defendants engaged in the practice of failing to pay
8 all wages due and owing to Plaintiff and the Represented Employees each pay period (Labor
9 Code § 204) and at the time employment ended with Defendants (Labor Code §§ 201 – 203),
10 including, but not limited to regular wages, minimum wages, overtime wages, among others.

11 7. Plaintiff also alleges that she and the Represented Employees did not receive
12 accurate itemized wage statements that fully complied with the requirements of Labor Code §
13 226(a) due to direct violations including failing to correctly state the regular hourly rate of pay
14 and displaying a rounded overtime payment that makes it impossible for employees to calculate
15 whether they are being paid correctly. Further, there are derivative wage statement violations
16 including: failure to accurately state gross wages earned; failure to accurately state total hours
17 worked; failure to accurately state all deductions; failure to accurately state net wages earned;
18 and, failure to state all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee.

20 8. Defendants also failed to maintain employment records in violation of Labor
21 Code § 1174(d), and § 7 of the IWC Wage Orders, by falsifying meal period time records to
22 avoid paying premiums.

23 9. Plaintiff alleges that Defendants' violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
25 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
26 competitors.

27 10. At all material times, Defendants and DOES 1 through 20 were and/or are
28 Represented Employees' employers or persons acting on behalf of Represented Employees'

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
4 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
5 California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
6 Cal.App.4th 1112.

7 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
8 monetary relief against Defendants and each of them, on behalf of themselves and the
9 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
10 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
11 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1194, 1194.2, and
12 1197 among possibly other sections inadvertently omitted. Plaintiffs also reserve the right to
13 name additional representatives throughout the State of California.

14 **II. JURISDICTION**

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

17 **III. VENUE**

18 13. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
19 Procedure §§ 395(a) and 395.5. Defendants transact business in Los Angeles County and the
20 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
21 Los Angeles County. Furthermore, Defendants employed or employ Plaintiff and Represented
22 Employees in Los Angeles County.

23 **IV. PARTIES**

24 **Plaintiff**

25 14. Plaintiff and Class Representative Susana Calderon was employed by Defendants
26 from approximately January 2022 and performed work for Defendants in Los Angeles County.

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1 **Defendants**

2 15. Plaintiff is informed and believes and thereon alleges that Defendant Prudential
3 Ins Co of America, is a New Jersey company, is authorized to and doing business in Los Angeles
4 County, California, and is and/or was the legal employer of Plaintiff and the Represented
5 Employees during the applicable statutory periods.

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

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

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

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

7 20. Pursuant to Labor Code § 2699.3(a), on April 19, 2022 Plaintiff gave written
8 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
9 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
11 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
12 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
13 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
14 the LWDA chooses not to investigate the allegations herein.

15 **V. CLASS ACTION ALLEGATIONS**

16 21. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

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

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

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

25 **California Class**

26 All current and former non-exempt employees who were
27 employed by Defendants as customer service representatives
28 at any time during the Relevant Time Period.

25. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

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

Waiting Time Penalties Subclass

All Represented Employees who separated from their
employment with Defendants during the period three years
before the filing of this action until class certification.

Wage Statement Penalties Subclass

All Represented Employees during the period one year
before the filing of this action until class certification.

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

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

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

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

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

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

4 ii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
6 Employees;

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

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

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

18 vi. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to maintain employment records;

20 vii. Whether Defendants violated California Business & Professions Code §§
21 17200 et seq. due to the: failure to pay all wages owed, including minimum, regular, and overtime
22 wages; and, failure to timely pay final wages;

23 viii. Whether Defendants violated § 17200 et seq. of the California Business and
24 Professions Code and, without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 210,
25 218.6, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1194, 1194.2, and 1197 among possibly
26 other sections inadvertently omitted, and the applicable IWC Wage Order, which violations
27 constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

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

31. **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, including minimum, regular, overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to timely pay final wages, failure to reimburse for business expenses, and failure to provide accurate itemized wage statements.

32. **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.

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

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND REGULAR WAGES

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

(Plaintiff and the Represented Employees Against All Defendants)

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

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1 35. Plaintiff and the Represented Employees were not exempt from the requirement
2 to be paid at least the applicable California minimum wage throughout the statutory period for
3 each hour worked.

4 36. At all relevant times, Plaintiff and the Represented Employees were not provided
5 proper minimum and regular wages due to Defendants' failure to accurately compensate for all
6 hours worked. Therefore, this resulted in unpaid minimum wages on each such occasion.

7 37. For example, Plaintiff and Represented Employees were customer service
8 representatives who worked from home and were required to log into their computers while off-
9 the-clock to receive their schedules for the following day.

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME WAGES**

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

8 *(Plaintiff and the Represented Employees Against All Defendants)*

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

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

13 47. 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 48. At all relevant times, Plaintiff and the Represented 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, described herein,
22 Plaintiff and the Represented Employees did not receive proper overtime compensation.

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

27 50. Plaintiff are informed and believe and thereon allege that Defendants
28 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the

1 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

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

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

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

20 (*Plaintiff and the Meal Period Subclass Against All Defendants*)

21 56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

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

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

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

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

11 61. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
12 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, the Represented Employees were subjected to meal period violations when they were:
14 (1) scheduled to take lunch after the 5th hours but their entered meal period time was later
15 fraudulently changed to reflect that meal periods were taken prior to the 5th hour , (2) unable to
16 take a meal period due to workload, and (3) not provided mandated second or third meal periods
17 on shifts in excess of 10 hours or 15 hours, respectively. Specifically, Plaintiff and the
18 Represented Employees were expected to take customer service calls up through the minute
19 before their lunch was scheduled lunch period, which resulted in meal periods that were not
20 taken at the scheduled times often resulting in late or otherwise noncompliant meal periods. On
21 some occasions, the meal periods were scheduled after the 5th hour. Moreover, Defendants
22 would adjust the meal period time records to avoid paying premiums on noncompliant meal
23 periods.

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

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY FINAL WAGES**

21 (Labor Code § 201 – 203)

22 *(Plaintiff and the Waiting Time Penalties Subclass Against All Defendants)*

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

25 68. Plaintiff and the Waiting Time Penalties Subclass are and/or were "non-exempt"
26 employees of Defendants who did not receive proper protections and benefits of the laws
27 governing the timing and payment of wages.

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

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

71. 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.

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

73. 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 Waiting Time Penalties Subclass all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Plaintiff and the Wage Statement Penalties Subclass Against All Defendants)

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

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

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1 76. Labor Code § 226(a) requires that employers furnish its employees with written
2 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
3 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate by the employee.

6 77. Defendants violates Labor Code § 226(a) every pay period with respect to
7 Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass because, as set
8 forth above, Defendants failed to provide a wage statement to Plaintiff, the Represented
9 Employees and the Wage Statement Penalties Subclass that complied with the requirements of
10 Labor Code § 226(a) by failing to accurately state gross wages earned, failure to accurately state
11 total hours worked, failure to accurately state all deductions, failure to accurately state net wages
12 earned, and failure to state all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours at each hourly rate by the employee.

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

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

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

19 (*Plaintiff and the Represented Employees Against All Defendants*)

20 82. Plaintiff incorporate the preceding paragraphs of the Complaint as if fully alleged
21 herein.

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

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

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1 85. As alleged herein, Defendants engaged in conduct that violated California's wage
2 and hour laws, including failure to pay minimum wages, regular wages, overtime wages, failure
3 to provide meal periods, failure to provide rest breaks, failure to timely pay final wages, and
4 failure to provide accurate and itemized wage statements, , all in order to decrease their costs and
5 increase their profits.

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

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

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

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

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

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

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

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

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

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

22 **VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF ACTION**
23 **(Labor Code § 2698 – 2699.5)**

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

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

6 **SEVENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE**

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

9 *Plaintiff and the Aggrieved Employees against All Defendants*

10 97. Plaintiff realleges and incorporates the paragraphs 1-20 and 95-96 of the
11 Complaint as if fully alleged herein.

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

15 99. At all relevant times herein, Plaintiff and the Aggrieved Employees were illegally
16 not paid proper minimum and/or regular wages due to Defendants' failure to accurately
17 compensate for all hours worked..

18 100. For example, Claimant and the Aggrieved Employees were customer service
19 representatives who worked from home and were required to log into their computers while off-
20 the-clock to receive their schedules for the following day. Moreover, Claimant and the
21 Aggrieved Employees be at their desks in advance of their shift start time in order to boot up
22 their computers which was required to be done off-the-clock, leading to a failure to pay proper
23 minimum wages

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

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

4 **EIGHTH CAUSE OF ACTION**

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

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

7 103. Plaintiff realleges and incorporates the paragraphs 1-20 and 95-102 of the
8 Complaint as if fully alleged herein.

9 104. Plaintiff and the Aggrieved Employees were “non-exempt” employees of
10 Defendants who did not receive proper protections and benefits of the laws governing payment
11 of overtime wages.

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

18 106. At all relevant times, Plaintiff and the Aggrieved Employees were required by
19 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper
20 overtime compensation.

21 107. As a result of Defendants' failure to pay for off-the-clock work performed by the
22 Aggrieved Employees, Defendants violate Labor Code §§ 204 and 510 and the applicable IWC
23 Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees
24 because Defendants failed to pay Plaintiff and members of the Aggrieved Employees for all
25 hours worked, including overtime hours, and required Plaintiff and the Aggrieved Employees to
26 work without being properly compensated for all overtime wages earned.

27 108. Plaintiff is informed and believes and thereon alleges that Defendants
28 intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff

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

109. 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.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

Plaintiff and the Aggrieved Employees against All Defendants

110. Plaintiff incorporates Plaintiff realleges and incorporates the paragraphs 1-20 and 95-109 of the Complaint as if fully alleged herein.

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

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

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

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

115. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to which they were entitled.

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1 116. As a result of Defendants' policies and practices, the Aggrieved Employees were
2 subjected to meal period violations when they were: (1) scheduled to take lunch after the 5th
3 hours but their entered meal period time was later fraudulently changed to reflect that meal
4 periods were taken prior to the 5th hour , (2) unable to take a meal period due to workload, and
5 (3) not provided mandated second or third meal periods on shifts in excess of 10 hours or 15
6 hours, respectively. Specifically, Plaintiff and the Aggrieved Employees were expected to take
7 customer service calls up through the minute before their lunch was scheduled lunch period,
8 which resulted in meal periods that were not taken at the scheduled times often resulting in late
9 or otherwise noncompliant meal periods. On some occasions, the meal periods were scheduled
10 after the 5th hour. Moreover, Defendants would adjust the meal period time records to avoid
11 paying premiums on noncompliant meal periods.

12 117. Furthermore, on the occasions that Defendants paid Plaintiff and the Aggrieved
13 Employees a meal premium under Labor Code § 226.7 for a missed/denied meal period.

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

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

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

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1 128. At all relevant times herein, Defendants did not provide Plaintiff and the
2 Aggrieved Employees with all wages due and owing each pay period, including, but not limited
3 to, minimum, regular, and overtime wages, within the time specified by Labor Code § 204.

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

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

10 **ELEVENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR**

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

13 (Labor Code § 226)

14 131. Plaintiff realleges and incorporates the paragraphs 1-20 and 95-130 of the
15 Complaint as if fully alleged herein.

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

19 133. Labor Code § 226(a) requires that employers furnish its employees with written
20 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
21 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
22 hourly rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee.

24 134. As set forth above, Defendants violate Labor Code § 226(a) every pay period with
25 respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage
26 statement to Plaintiff and the Aggrieved Employees that complied with the requirements of
27 Labor Code § 226(a) by failing to accurately state gross wages earned, failure to accurately state
28 total hours worked, failure to accurately state all deductions, failure to accurately state net wages

1 earned, and failure to state all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours at each hourly rate by the employee.

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

6 **TWELFTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR**

8 **FAILURE TO MAINTAIN EMPLOYMENT RECORDS**

9 (Labor Code §§ 1174, 1174.5, and § 7 of the IWC Wage Orders)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

11 136. Plaintiff realleges and incorporates the paragraphs 1-20 and 95-135 of the
12 Complaint as if fully alleged herein.

13 137. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
14 who did not receive proper protections and benefits of the laws requiring the maintenance of
15 employment records.

16 138. Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to
17 maintain accurate employment records, including accurate payroll records showing the total
18 number of regular and overtime hours worked each day by employees, including meal periods,
19 and the gross wages earned by the employee, including all applicable pay rates and the
20 corresponding number of hours worked at each pay rate, among other requirements.

21 139. Here, the Company failed to maintain accurate employment records as mandated
22 by California law by falsifying meal period time records. Therefore, in addition to recovering the
23 amount of attorneys' fees and cost incurred herein, Plaintiff seeks assessment of civil penalties in
24 accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

25 **VI. PRAYER FOR RELIEF**

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

1 1. As to the Seventh through Twelfth Causes of Action, the assessment of all
2 applicable and available remedies under the PAGA in accordance with Labor § 2699 and/or any
3 other damages permitted under the PAGA provided for by the California Labor Code Private
4 Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) as a result of Defendants' violations
5 of the Labor Code as alleged herein;

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

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

8 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

17 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
18 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, and 2802, among other
19 sections inadvertently omitted;

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

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

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

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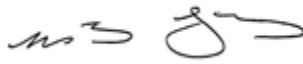
1 **DEMAND FOR JURY TRIAL**

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

5
6 Dated: April 20, 2022

LAUBY, MANKIN & LAUBY LLP

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8 BY:



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