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

EDWARD CRUZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

C T CORPORATION SYSTEM., a Delaware
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Assigned for All Purposes Judge Peter Wilson
Case No.: 30-2022-01261966-CU-OE-CXC

**CLASS AND REPRESENTATIVE
COMPLAINT**

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

1 Plaintiff Edward Cruz (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants C T
5 Corporation System and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of
6 all current and former nonexempt employees employed by Defendants in California (the “Class”
7 or “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to
8 pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to reimburse business expenses, failure to pay
10 vested vacation, failure to timely pay wages each period and upon separation of employment,
11 and failure to provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately July 2019 through
13 April 2022.

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

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As one specific example, Plaintiff and the Represented Employees were frequently
20 required to perform off-the-clock work at the beginning and end of shifts without compensation.
21 And Plaintiff and the Represented Employees were often required to attend Zoom meetings
22 while clocked out for meal periods, leading to uncompensated work. Because this time was
23 spent under Defendants’ control without compensation, this violates California law and led to
24 minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th
25 829 (California law “do[es] not allow employers to require employees to routinely work for
26 minutes off the clock without compensation”).

27 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
28 Represented Employees. For example, at all relevant times, Plaintiff and the Represented

1 Employees were paid on an hourly basis plus additional earned compensation in the form of
2 nondiscretionary bonuses, commissions, and other similar payments. However, on the occasions
3 when Plaintiff and the Represented Employees worked overtime hours and received additional
4 earned compensation during the same workweek, Defendants failed to properly include these
5 amounts in the calculations for the regular rate of pay – in violation of California law.

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

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

20 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
21 Employees to incur necessary business-related expenses and costs without reimbursement. For
22 example, Plaintiff was required to acquire and maintain internet and telephone services to work
23 from his home office, without reimbursement.

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

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

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

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

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

19 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
20 monetary relief against Defendants and each of them, on behalf of himself and the Represented
21 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
22 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
23 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
24 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
25 right to name additional representatives throughout the State of California.

26 **II. JURISDICTION**

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

1 **III. VENUE**

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

7 **IV. PARTIES**

8 **Plaintiff**

9 17. Plaintiff and Class Representative Edward Cruz was employed by Defendants
10 from approximately July 2019 through April 2022 and performed work for Defendants in Orange
11 County.

12 **Defendants**

13 18. Plaintiff is informed and believes and thereon alleges that Defendant C T
14 Corporation System is a Delaware corporation authorized to and doing business in Orange
15 California. Plaintiff is also informed and believes that Defendant C T Corporation System is
16 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
17 statutory periods.

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

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

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

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

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

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

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1 **V. CLASS ACTION ALLEGATIONS**

2 24. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
3 alleged herein.

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

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

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

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

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

13 **Meal Break Subclass**

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

16 **Rest Break Subclass**

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

19 **Unreimbursed Expense Subclass**

20 All Represented Employees who were required to incur
21 expenses to discharge their duties for Defendants without
22 reimbursement during the Relevant Time Period.

23 **Vested Vacation Subclass**

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

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1 **Waiting Time Penalties Subclass**

2 All Represented Employees who separated from their
3 employment with Defendants during the period three years
4 before the filing of this action and ending when final
5 judgment is entered.

6 **Wage Statement Penalties Subclass**

7 All Represented Employees during the period one year
8 before the filing of this action and ending when final
9 judgment is entered.

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

12 30. Plaintiff, as Class Representative, is a member of the class and subclasses that he
13 seeks to represent.

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

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

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

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

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

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

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

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

14 vi. Whether Defendants violated the California Labor Code by failing to
15 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
16 upon separation of employment;

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

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

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

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

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

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

23 *Plaintiff and the Represented Employees Against All Defendants*

24 37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

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

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

6 40. As one specific example, Plaintiff and the Represented Employees were
7 frequently required to perform off-the-clock work at the beginning and end of shifts without
8 compensation. And Plaintiff and the Represented Employees were often required to attend
9 Zoom meetings while clocked out for meal periods, leading to uncompensated work. Because
10 this time was spent under Defendants' control without compensation, this violates California law
11 and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation*
12 (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to
13 routinely work for minutes off the clock without compensation").

14 41. As a result of these policies and practices, Defendants failed to pay Plaintiff and
15 the Represented Employees for all hours worked.

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

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

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

26 45. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
2 Labor Code regulating hours and days of work respectively.

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

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

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

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

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

14 *Plaintiff and the Represented Employees Against All Defendants*

15 49. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 50. Plaintiff and the Represented Employees were employees of Defendants who did
18 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

1 53. As one specific example, Plaintiff and the Represented Employees were
2 frequently required to perform off-the-clock work at the beginning and end of shifts without
3 compensation. And Plaintiff and the Represented Employees were often required to attend
4 Zoom meetings while clocked out for meal periods, leading to uncompensated work. Because
5 this time was spent under Defendants' control without compensation, this violates California law
6 and leads to overtime violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
7 (California law "do[es] not allow employers to require employees to routinely work for minutes
8 off the clock without compensation").

9 54. Additionally, at all relevant times, Plaintiff and the Represented Employees were
10 paid on an hourly basis plus additional earned compensation in the form of nondiscretionary
11 bonuses, commissions, and other similar payments. However, on the occasions when Plaintiff
12 and the Represented Employees worked overtime hours and received additional earned
13 compensation during the same workweek, Defendants failed to properly include these amounts
14 in the calculations for the regular rate of pay – violating the well-established rule that overtime
15 must always be paid at time and one-half the regular rate of pay.

16 55. As a result of these policies and practices, Defendants failed to pay Plaintiff and
17 the Represented Employees for all overtime hours worked.

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

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

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

17 63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

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

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

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

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

26 72. By their failure to provide Plaintiff and the Meal Break Subclass with meal
27 periods as required by California law, and failing to pay one hour of additional wages in lieu of
28 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and

1 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
2 the employee's regular rate of compensation for each work day that a meal period was not
3 lawfully provided in an amount to be proven at time of trial.

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

25 79. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
26 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
27 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
28 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to

1 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
2 occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize
3 and/or permit mandated third or fourth rest breaks.

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 (Labor Code § 2802)

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

24 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

26 85. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
27 Defendants who did not receive proper protections and benefits of the laws governing
28 reimbursement of business expenses.

1 86. Labor Code § 2802(a) requires that the employer indemnify its employees for
2 expenses and losses incurred while discharging their duties or in obedience to the directions of
3 their employer.

4 87. At all relevant times herein mentioned, as a condition of employment, Defendants
5 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
6 expenses and costs without reimbursement. For example, Plaintiff was required to acquire and
7 maintain internet and telephone services to work from his home office, without reimbursement.

8 88. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
9 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
10 direct consequence of employment with Defendants and/or under the direction of Defendants.

11 89. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
12 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
13 Defendants, thereby receiving an economic benefit.

14 90. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
15 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
16 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
17 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
18 to be proved at time of trial.

19 91. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
20 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
21 civil actions, and said interest will accrue from the date on which the employee incurred the
22 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
23 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
24 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

25 92. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
26 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
27 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
28 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the

unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's fees will be in an amount to be proved at the time of trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

Plaintiff and the Vested Vacation Subclass Against All Defendants

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

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

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

96. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Vested Vacation Subclass accrued vacation and/or PTO hours (collectively, "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

97. For instance, Defendants failed to pay all accrued and unused vacation hours to the Represented Employees upon separation of employment. And, for vacation hours that Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the Vested Vacation Subclass. But Labor Code § 227.3 requires that vested vacation be cashed out at the final rate of pay. And, since the final rate of pay for Plaintiff and the Vested Vacation Subclass was often higher than the base rate (due to other nondiscretionary compensation), Defendants failed to correctly calculate and pay all vested vacation wages due and owing.

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

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

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

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

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY FINAL WAGES**

13 (Labor Code §§ 201 – 203)

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

15 102. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

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

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

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

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

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

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

8 109. Furthermore, Defendants failed to pay all wages due and owing to the Waiting
9 Time Subclass because of the failure to pay all required sick pay wages. Labor Code § 246(1)(1)
10 provides that paid sick time for non-exempt employees must be “calculated in the same manner
11 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
12 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
13 246(1)(2) states that the paid sick time must be “calculated by dividing the employee’s total
14 wages, not including overtime premium pay, by the employee’s total hours worked in the full
15 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
16 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
17 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

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1 **EIGHTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

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

5 111. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

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

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

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

23 115. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
24 each period due to the failure to pay and report premium wages for denied meal periods and rest
25 breaks under § 226.7.

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

1 requirements of Labor Code § 226(a).

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

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

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

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

1 applicable penalty is all in an amount to be shown according to proof at trial.

2 **NINTH CAUSE OF ACTION**

3 **UNFAIR AND UNLAWFUL COMPETITION**

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

5 *Plaintiff and the Represented Employees against All Defendants*

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

8 122. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
9 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
10 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
11 due to the unfair and unlawful business practices of Defendants as alleged herein.

12 123. Defendants, and each of them, are “persons” as defined under Business &
13 Professions Code § 17021.

14 124. As alleged herein, Defendants engaged in conduct that violated California’s wage
15 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
16 mandated meal periods and rest breaks, failure to reimburse business expenses, failure to pay
17 vested vacation, and failure to timely pay wages upon separation of employment, all to decrease
18 their costs and increase profits.

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

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

25 127. Defendants’ violations of the California Labor Code and IWC Wage Orders and
26 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
27 practices because it was done in a systematic manner over a period of time to the detriment of the
28 Plaintiff and all others similarly-situated.

1 128. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
4 of Civil Procedure § 1021.5.

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

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

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

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

1 133. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
2 Represented Employees are entitled to restitution of the wages withheld and retained by
3 Defendants during a period that commences four years prior to the filing of this complaint; a
4 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
5 Represented Employees; an award of attorneys’ fees pursuant to California Code of Civil
6 Procedure § 1021.5 and other applicable laws; and an award of costs.

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

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

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

20 136. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
21 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations. Once more than sixty-five (65) days have
24 passed since the date gave notice, Plaintiff will have fully satisfied the administrative
25 prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the
26 PAGA allegations enumerated below.

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1 **TENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 137. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

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

10 139. Plaintiff and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

13 140. As one specific example, Plaintiff and the Aggrieved Employees were frequently
14 required to perform off-the-clock work at the beginning and end of shifts without compensation.
15 And Plaintiff and the Aggrieved Employees were often required to attend Zoom meetings while
16 clocked out for meal periods, leading to uncompensated work. Because this time was spent
17 under Defendants' control without compensation, this violates California law and led to
18 minimum wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
19 (California law "do[es] not allow employers to require employees to routinely work for minutes
20 off the clock without compensation").

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

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

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

1 144. 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 **TENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 145. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

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

12 147. 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.

18 148. 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. However, due to
20 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
21 Aggrieved Employees did not receive proper overtime compensation.

22 149. As one specific example, Plaintiff and the Aggrieved Employees were frequently
23 required to perform off-the-clock work at the beginning and end of shifts without compensation.
24 And Plaintiff and the Aggrieved Employees were often required to attend Zoom meetings while
25 clocked out for meal periods, leading to uncompensated work. Because this time was spent
26 under Defendants' control without compensation, this violates California law and leads to
27 overtime violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
28 "do[es] not allow employers to require employees to routinely work for minutes off the clock

without compensation”).

150. Additionally, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses, commissions, and other similar payments. However, on the occasions when Plaintiff and the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, Defendants failed to properly include these amounts in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

151. As a result of these policies and practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked.

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

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

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

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

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

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

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

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

8 **THIRTEENTH CAUSE OF ACTION**

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

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

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 164. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

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

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

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

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

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

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

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

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

12 **FOURTEENTH CAUSE OF ACTION**

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

14 (Labor Code § 2802)

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

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

18 173. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws governing reimbursement of
20 business expenses.

21 174. Labor Code § 2802(a) requires that the employer indemnify its employees for
22 expenses and losses incurred while discharging their duties or in obedience to the directions of
23 their employer.

24 175. At all relevant times herein mentioned, as a condition of employment, Defendants
25 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
26 costs without reimbursement, including acquiring and maintaining a smart phone and related
27 monthly data plan to communicate with the Company via phone, text message, and e-mail.

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

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

7 **FIFTEENTH CAUSE OF ACTION**

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

9 (Labor Code § 227.3)

10 *Plaintiff and the Aggrieved Employees Against All Defendants*

11 178. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 179. Plaintiff and the Aggrieved Employees were employees of Defendants who did
14 not receive proper protections and benefits of the laws governing the payment of vested vacation
15 time and/or paid time off upon separation of employment.

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

20 181. At all relevant times, Defendants utilized a policy and practice through which
21 Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively,
22 "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

23 182. For instance, Defendants failed to pay all accrued and unused vacation hours to
24 the Aggrieved Employees upon separation of employment. And, for vacation hours that
25 Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the
26 Aggrieved Employees. But Labor Code § 227.3 requires that vested vacation be cashed out at
27 the final rate of pay. And, since the final rate of pay for Plaintiff and the Aggrieved Employees
28 was often higher than the base rate (due to other nondiscretionary compensation), Defendants

1 failed to correctly calculate and pay all vested vacation wages due and owing.

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

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

7 **SIXTEENTH CAUSE OF ACTION**

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

9 (Labor Code § 204)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

11 185. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

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

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

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

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

1 within the time specified by Labor Code § 204.

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

5 **SEVENTEENTH CAUSE OF ACTION**

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

7 (Labor Code §§ 201 – 203 and 256)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

26 197. Furthermore, Defendants failed to pay all wages due and owing to the Aggrieved
27 Employees because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
28 provides that paid sick time for non-exempt employees must be “calculated in the same manner

1 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
2 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
3 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
4 wages, not including overtime premium pay, by the employee’s total hours worked in the full
5 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
6 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
7 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

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

14 **EIGHTEENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR**

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

17 (Labor Code § 226)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 200. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

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

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

9 204. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
10 each period due to the failure to pay and report premium wages for denied meal periods and rest
11 breaks under § 226.7.

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

16 206. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
18 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
19 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
20 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

21 **VII. PRAYER FOR RELIEF**

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

- 25 1. That the First through Ninth Causes of Action be certified as a class action;
- 26 2. That Plaintiff be appointed as Class Representative;
- 27 3. That counsel for Plaintiff be appointed Class Counsel;

28 ///

1 4. For all applicable statutory penalties recoverable under the First through Ninth
2 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
3 Orders of the Industrial Welfare Commission;

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

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

8 7. As to the Tenth through Eighteenth Causes of Action, the assessment of all
9 applicable and available remedies under the PAGA;

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

11 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
12 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
13 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

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

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

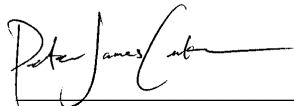
18 12. For such other relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: May 25, 2022

LAUBY, MANKIN & LAUBY LLP

24
25 BY: 
26 Brian J. Mankin, Esq.
27 Peter J. Carlson, Esq.
28 Attorneys for Plaintiff