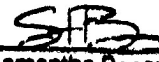


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANTHONY FREEMAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

STERIGENICS U.S., LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

CASE NO.: CIVSB2220535

[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS:

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

PAGA CLAIMS:

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

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

11 2. Plaintiff was employed by Defendants from approximately April 2022 through
12 September 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 employment.

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked.

19 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
20 Represented Employees. For example, Defendants paid Plaintiff and the Represented
21 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as
22 bonuses). However, during workweeks where the Represented Employees worked overtime
23 hours and earned additional nondiscretionary compensation, Defendants failed to include that
24 compensation in the calculations for the regular rate of pay – violating the well-established rule
25 that overtime must always be paid at time and one-half the regular rate of pay.

26 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
27 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
28 the Represented Employees were subjected to meal period violations when they were: (1) unable

1 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
2 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
3 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
4 in excess of 10 hours.

5 7. Defendants also failed to provide Plaintiff and the Represented Employees with
6 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
7 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
8 Represented Employees, the Represented Employees were unable to leave the premises for rest
9 breaks, and the Represented Employees were often not authorized and/or permitted to take
10 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
11 occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed
12 to authorize and/or permit mandated third rest breaks.

13 8. Moreover, on the occasions when Plaintiff and the Represented Employees were
14 denied compliant meal periods and rest breaks, Defendants failed to pay the “premium” required
15 under Labor Code § 226.7.

16 9. Also, at all relevant times, Defendants utilized a policy and practice through
17 which Plaintiff and the Represented Employees accrued vacation. However, on occasions when
18 Plaintiff and the Represented Employees had accrued but unused vacation hours upon separation
19 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
20 “final rate” required by Labor Code § 227.3.

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

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

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

5 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
6 Represented Employees’ employers or persons acting on behalf of the Represented Employees’
7 employer who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
8 Labor Code or any provision regulating hours and days of work in an IWC Wage Order. As
9 such, Defendants and DOES 1 through 20 are subject to penalties for each underpaid employee
10 as set forth in Labor Code § 558 and are further liable as the employer under § 558.1.

11 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198,
16 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
17 right to name additional representatives throughout the State of California.

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

23 **II. JURISDICTION**

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

26 **III. VENUE**

27 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
28 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful

1 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
2 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
3 Employees in San Bernardino County.

4 **IV. PARTIES**

5 **Plaintiff**

6 18. Plaintiff and Class Representative Anthony Freeman was employed by
7 Defendants from approximately April 2022 through September 2022 and performed work for
8 Defendants in San Bernardino County.

9 **Defendants**

10 19. Plaintiff is informed and believes and thereon alleges that Defendant Sterigenics
11 U.S., LLC is a Delaware limited liability company authorized to and doing business in San
12 Bernardino County, California. Plaintiff is also informed and believes that Defendant Sterigenics
13 U.S., LLC is and/or was the legal employer of Plaintiff and the Represented Employees during
14 the applicable statutory periods.

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

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

1 22. 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 23. Plaintiff is informed and believes and thereon alleges that, in conducting
8 themselves in the manner described herein, Defendants, and each of them, were acting in active
9 concert with one another such that the acts of each were and are fully attributable to the others in
10 all material respects. Plaintiff is further informed and believes that at all relevant times
11 Defendants and each of them are now, and at all material times herein mentioned were, the
12 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
13 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
14 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
15 their remaining co-Defendants.

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

24 **V. CLASS ACTION ALLEGATIONS**

25 25. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 (hereinafter “the Complaint”) as if fully alleged herein.

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

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

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

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

7 29. Plaintiff also seeks to represent the following subclasses:

8 **Meal Break Subclass**

9 All Represented Employees who worked a shift in excess of
10 5 hours during the Relevant Time Period.

11 **Rest Break Subclass**

12 All Represented Employees who worked a shift of at least
13 3.5 hours during the Relevant Time Period.

14 **Vested Vacation Subclass**

15 All Represented Employees who had accrued but unused
16 vacation upon separation of employment during the period
17 four years before the filing of this action and ending when
18 final judgment is entered.

19 **Waiting Time Penalties Subclass**

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

24 **Wage Statement Penalties Subclass**

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

28 ///

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

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

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

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

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

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

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

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

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28 with one additional hour of wages at the regular rate of pay for each instance when a paid rest

break was not provided;

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

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

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

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

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

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

36. **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.

37. **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

1 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
2 law and fact common to the Class predominate over any questions affecting only individual
3 members of the Class. Each Represented Employee has been damaged and is entitled to
4 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
5 treatment will allow those similarly situated persons to litigate their claims in the manner that is
6 most efficient and economical for the parties and the judicial system.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

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

10 *Plaintiff and the Represented Employees Against All Defendants*

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

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

16 40. Plaintiff and the Represented Employees were not provided proper minimum and
17 regular wages due to Defendants' failure to accurately record and compensate for all hours
18 worked.

19 41. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
20 Represented Employees for all hours worked.

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

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

27 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
28 Represented Employees were entitled to be paid wages throughout the statutory period for each

1 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
2 them in accordance thereto.

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

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

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES**

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

18 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

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

5 53. Additionally, Defendants paid Plaintiff and the Represented Employees on an
6 hourly basis but also paid additional nondiscretionary compensation (*e.g.*, bonuses, shift
7 differentials). However, during workweeks where the Represented Employees worked overtime
8 hours and earned additional nondiscretionary compensation, Defendants failed to include that
9 compensation in the calculations for the regular rate of pay – violating the well-established rule
10 that overtime must always be paid at time and one-half the regular rate of pay.

11 54. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
12 Represented Employees for all overtime hours worked.

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

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

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

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

28 ///

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

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

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

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

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

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

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

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

27 72. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
28 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal

1 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

20 78. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
21 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
22 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
23 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
24 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
25 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
26 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
27 third rest breaks.

28 ///

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PAY VESTED VACATION**

19 (Labor Code § 227.3)

20 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

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

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

26 85. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
27 vacation, paid time off, or compensated time off policy must, upon an employee's separation
28 from employment, pay to the employee all vested but unused vacation and/or paid time off at his

1 final rate of pay.

2 86. At all relevant times, Defendants utilized a policy and practice through which
3 Plaintiff and the Vested Vacation Subclass accrued vacation hours. However, on occasions
4 when Plaintiff and the Vested Vacation Subclass had accrued but unused vacation hours upon
5 separation of employment, Defendants failed to pay these wages and, further, failed to pay them
6 at the “final rate” required by Labor Code § 227.3.

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

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

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

16 90. As a result of Defendants’ violations of Labor Code § 227.3, Plaintiff and the
17 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
18 interest, attorneys’ fees, and costs as permitted under California law.

19 **SIXTH 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 91. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

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

28 ///

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

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

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

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

12 97. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
13 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
14 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
15 period premiums, and vested vacation wages.

16 98. Additionally, at all relevant times, Defendants failed to pay all mandated sick
17 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

18 99. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
19 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
20 employee uses paid sick time, whether or not the employee actually works overtime in that
21 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
22 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
23 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

24 100. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
25 hourly basis plus additional compensation (such as bonuses or shift differentials). However, on
26 the occasions that the Waiting Time Penalties Subclass took sick time and received paid sick
27 leave, Defendants only paid sick time at the base rate of pay (not factoring in the additional
28 compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at the time of

1 separation of employment.

2 101. Plaintiff alleges that, at all times material to this action, Defendants had a planned
3 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
4 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
5 202, including, but not limited to, minimum, regular, and overtime wages, meal and rest period
6 premiums, and vested vacation wages. Consequently, pursuant to Labor Code § 203, Defendants
7 owe Plaintiff and the Waiting Time Penalties Subclass the above-described waiting time penalty,
8 all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

9 **SEVENTH CAUSE OF ACTION**

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

11 (Labor Code § 226)

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

13 102. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
14 alleged herein.

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

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

24 105. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
25 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
26 total hours worked (for example, the wage statements failed to accurately reflect the correct
27 compensable hours); failure to accurately state gross wages earned; failure to accurately state all
28 deductions; failure to accurately state net wages earned; failure to state the applicable hourly

1 rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay
2 period; failure to accurately state the name and address of the legal entity of the employer; and
3 failure to accurately state the corresponding number of hours worked at each hourly rate.

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

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

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

21 109. As a result of Defendants' knowing and intentional failure to comply with Labor
22 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
23 that each was prevented from knowing, understanding and disputing the wage payments paid to
24 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
25 injury in that the failure to show all wages earned on the itemized wage statements resulted in
26 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
27 withholdings owed by the employer, including, but not limited to, the failure to make all
28 necessary contributions for unemployment benefits, social security benefits, proper payment of

1 taxes and withholdings, and other mandated state and federal benefits.

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **UNFAIR AND UNLAWFUL COMPETITION**

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

14 *Plaintiff and the Represented Employees against All Defendants*

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

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

21 114. Defendants, and each of them, are "persons" as defined under Business &
22 Professions Code § 17021.

23 115. As alleged herein, Defendants engaged in conduct that violated California's wage
24 and hour laws, including failure to pay all wages owed, including minimum, regular, overtime,
25 sick, and vacation wages, failure to provide mandated meal periods and rest breaks, and failure to
26 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

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

5 118. Defendants' violations of the California Labor Code and IWC Wage Orders and
6 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
7 practices because it was done in a systematic manner over a period of time to the detriment of the
8 Plaintiff and all others similarly situated.

9 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
11 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
12 Code of Civil Procedure § 1021.5.

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

19 121. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
20 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
21 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
22 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
23 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
24 harm unless Defendants, and each of them, are restrained from continuing to engage in said
25 unfair, unlawful and/or fraudulent business practices.

26 122. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
27 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
28 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
2 Represented Employees are not obligated to establish individual knowledge of the unfair
3 practices of Defendants in order to recover restitution.

4 123. Plaintiff, individually, and on behalf of the Represented Employees, is further
5 entitled to and do seek a declaration that the above described business practices are unfair,
6 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
7 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
8 the future.

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

15 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
16 **(Labor Code §§ 2698 – 2699.5)**

17 125. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
20 action filed on behalf of himself and all other similarly situated current and former aggrieved
21 employees against whom one or more of the alleged violations was committed.

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

27 127. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
28 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to

1 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
2 the facts and theories to support the alleged violations. Now that sixty-five (65) days have
3 elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming
4 jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites
5 for bringing suit under the PAGA.

6 **NINTH CAUSE OF ACTION**

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

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

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

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

14 130. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
15 proper minimum wages due to Defendants' failure to accurately record and compensate for all
16 hours worked.

17 131. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
18 Represented Employees for all hours worked.

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

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

25 134. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
26 Aggrieved Employees were entitled to be paid wages throughout the statutory period for each
27 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
28 accordance thereto.

1 135. 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))

7 136. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

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

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

17 139. At all relevant times, Plaintiff and the Aggrieved Employees were required by
18 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
19 the reasons discussed herein, Plaintiff and the Aggrieved Employees did not receive proper
20 overtime compensation.

21 140. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
22 proper overtime wages due to Defendants' failure to accurately record and compensate for all
23 hours worked.

24 141. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on
25 an hourly basis plus additional nondiscretionary compensation in the form of shift differentials,
26 bonuses, and other payments. However, on the occasions when Plaintiff and the Aggrieved
27 Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received
28 additional nondiscretionary compensation during the workweek, Defendants failed to properly

1 include these amounts in the calculations for the regular rate of pay. Therefore, Defendants
2 failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per
3 day and/or 40 per week.

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

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

11 144. 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 **ELEVENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS**

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

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

19 146. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
20 of Defendants who did not receive proper protections and benefits of the laws governing
21 mandatory meal periods.

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

24 148. 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.

3 149. 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.

6 150. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
7 the 30-minute off-duty meal periods that they were entitled to under California law.

8 151. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved
9 Employees were subjected to meal period violations when they were: (1) unable to take a meal
10 period due to workload, (2) forced to take an on-duty meal period while under the control of
11 Defendants, (3) forced to take a shortened meal period, (4) forced to take a meal period after the
12 5th hour of work, and (5) not provided a mandated second meal period on shifts in excess of 10
13 hours.

14 152. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
15 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
16 and the Aggrieved Employees were not provided with all mandatory meal periods and
17 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
18 compensation at the regular rate of pay in lieu thereof. *See Ferra v. Loews Hollywood Hotel,*
19 *LLC* (2021) 11 Cal.5th 858 (meal and rest premiums must be paid at the "regular rate").

20 153. On information and belief, Plaintiff and the Aggrieved Employees did not
21 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
22 obtained from Plaintiff and the Aggrieved Employees 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 Aggrieved
25 Employees to take meal periods in accordance with California law.

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

1 **TWELFTH CAUSE OF ACTION**

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

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

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

6 156. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
7 of Defendants who did not receive proper protections and benefits of the laws governing
8 mandatory rest breaks.

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

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

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

20 160. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
21 with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
22 mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the
23 Aggrieved Employees, Plaintiff and the Aggrieved Employees were unable to leave the premises
24 for rest breaks, and Plaintiff and the Aggrieved Employees were often not authorized and/or
25 permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and
26 being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the
27 Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
28 and/or permit a third mandated rest break. As such, Plaintiff and other Aggrieved Employees

1 were not provided rest period premiums for their missed or non-complaint rest periods

2 161. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
3 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
4 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
5 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu
6 thereof at the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
7 858 (meal and rest premiums must be paid at the “regular rate”).

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

11 **THIRTEENTH CAUSE OF ACTION**

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

13 (Labor Code § 227.3)

14 163. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 164. Plaintiff and the Aggrieved Employees were employees of Defendants who did
17 not receive proper protections and benefits of the laws governing the payment of vested vacation
18 time and/or paid time off upon separation of employment.

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

23 166. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on the occasions
25 when Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon
26 separation of employment, Defendants failed to pay for all accrued but unused vacation wages
27 and, further, failed to for these earned wages at the “final rate” including applicable shift
28 differentials and other nondiscretionary compensation, as required by Labor Code § 227.3.

1 167. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
2 for all accrued but unused vacation hours at the “final rate” upon separation of employment – in
3 violation of Labor Code § 227.3.

4 168. 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 any other damages permitted under the PAGA.

7 **FOURTEENTH CAUSE OF ACTION**

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

9 (Labor Code § 204)

10 169. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 170. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
13 of Defendants who did not receive proper protections and benefits of the laws regarding the
14 timing of payment of wages each period.

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

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

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

27 174. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
28 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,

1 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

2 **FIFTEENTH CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY FINAL WAGES**

4 (Labor Code §§ 201–203)

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

7 176. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of wages.

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

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

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

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

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

25 182. Additionally, at all relevant times, Defendants failed to pay all mandated sick
26 wages owed to the Aggrieved Employees at the proper rate of pay.

27 183. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
28 must be “calculated in the same manner as the regular rate of pay for the workweek in which the

1 employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
3 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
4 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

5 184. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly
6 basis plus additional compensation in the form of shift differentials and/or nondiscretionary
7 compensation. However, on the occasions that the Aggrieved Employees took sick time and
8 received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in
9 the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages
10 at the time of separation of employment.

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

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

17 **SIXTEENTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

20 187. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

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

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

1 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

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

10 191. Additionally, Defendants' wage statements directly violated Labor Code §
11 226(a)(9) each period because they failed to accurately state the applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each rate. Specifically,
13 Plaintiff and the Aggrieved Employees often received shift differentials for every hour worked at
14 a set rate of pay. These shift differentials were indisputably an "applicable hourly rate" in effect
15 during the periods when they were earned, yet Defendants' wage statements failed to provide
16 any information regarding the rate of pay or number of hours worked at the shift differential
17 hourly rate – in direct violation of Labor Code § 226(a)(9).

18 192. Therefore, at all relevant times, Defendants violate Labor Code §§ 226(a) every
19 pay period with respect to Plaintiff and each and every one of the Aggrieved Employees because
20 Defendants' wage statements failed to accurately state all information required by § 226(a).
21 And, unlike class action claims, PAGA claims need not meet the "injury" and "knowing and
22 intentional" violation requirements of § 226(e). See *Lopez v. Friant & Associates, LLC* (2017)
23 15 Cal.App.5th 773, 788 ("a plaintiff seeking civil penalties under PAGA for a violation of
24 section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements
25 of section 226(e)(1)"); *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 ("the scienter
26 requirement [of § 226(e)] has no application in a PAGA claim for violation of [§ 226(a)]").

27 193. As a result of the Defendants' violations of Labor Code § 226(a)(9), Plaintiff
28 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, including the \$250 penalty per violation specified by Labor Code § 226.3. *See Raines v.*
Coastal Pacific Food Distributors, Inc. (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides
the civil penalty for failure to comply" with Labor Code § 226).

VII. PRAYER FOR RELIEF

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

1. That the First through Eighth Causes of Action be certified as a class action;
2. That Plaintiff be appointed as Class Representative;
3. That counsel for Plaintiff be appointed Class Counsel;
4. For all applicable statutory penalties recoverable under the First through Eighth
Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
Orders of the Industrial Welfare Commission;
5. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
law, including those pursuant to the Labor Code;
6. For injunctive relief and/or restitution as provided by the Labor Code and
Business and Professions Code § 17200, *et seq.*;
7. As to the Ninth through Sixteenth Causes of Action, the assessment of all
applicable and available remedies under the PAGA;
8. For reasonable attorneys' fees and costs as permitted under the PAGA;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1197,
1198, and 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but
not limited to, unpaid wages, benefits, and penalties according to proof, including interest
thereon;
11. For pre- and post-judgment interest; and

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

2 **DEMAND FOR JURY TRIAL**

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

5
6 Dated: January 12, 2023

LAUBY, MANKIN & LAUBY LLP

7 *Kristina Bui Carlson*
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BY:

9 _____
10 Brian J. Mankin, Esq.
11 Kristina Bui Carlson, Esq.
12 Attorneys for Plaintiff
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