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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Brittany Maiden, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

AbleLight, Inc. and Does 1 through 20,
inclusive,

Defendants.

Case No.: 22CV022721

Honorable Brad Seligman – Dept. 23

*[Filed as a matter of right pursuant to
Labor Code § 2699.3(a)(2)(C)]*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate, Itemized Wage Statements;
6. Failure to Reimburse for Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*;
8. Enforcement of Labor Code § 2698 Et. Seq. (“PAGA”)

Jury Trial Demanded

FILED
Superior Court of California
County of Alameda
02/02/2023
Clad File, Executive Officer / Clerk of the Court
By: Cheryl Clark Deputy
C. Clark

1 Plaintiff Brittany Maiden, individually and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Brittany Maiden (“Plaintiff”) brings this putative class action against
5 Defendant AbleLight, Inc. (“Defendant AbleLight”) (formerly known as Bethesda Lutheran
6 Communities, Inc.) and Does 1 through 20, inclusive (collectively, “Defendants”), on behalf
7 of herself individually and a putative class of non-exempt employees employed by Defendants
8 throughout California.

9 2. Defendant AbleLight is a Wisconsin nonprofit 501(c)(3) organization that
10 provides employment in California.

11 3. Through this action, Plaintiff alleges that Defendant has engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendant’s deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendant has
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay all wages for all hours worked, including minimum and
18 overtime wages;
- 19 (b) Failing to provide meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
21 thereof;
- 22 (d) Failing to provide accurate, itemized wage statements;
- 23 (e) Failing to reimburse all reasonable and necessary business expenses; and
- 24 (f) Failing to pay all wages due upon separation of employment.

25 5. Plaintiff brings this lawsuit seeking monetary relief against Defendant on
26 behalf of herself and all others similarly situated in California to recover, among other things,
27 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
28 to Cal. Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12 1194, 1194.2, 1197, 1198, 2800,

1 and 2802.

2 **JURISDICTION AND VENUE**

3 6. This is a class action, pursuant to California Code of Civil Procedure § 382.
4 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional
5 limits of the Superior Court and will be established according to proof at trial.

6 7. This Court has jurisdiction over this action pursuant to the California
7 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
8 causes except those given by statutes to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 8. This Court has jurisdiction over all Defendants because, upon information and
11 belief, they are citizens of California, have sufficient minimum contacts in California or
12 otherwise intentionally avail themselves of the California market so as to render the exercise
13 of jurisdiction over them by the California courts consistent with traditional notions of fair
14 play and substantial justice.

15 9. Venue is proper in this Court because, upon information and belief, Defendants
16 reside, transact business or have offices in this county and the acts and omissions alleged
17 herein took place in this county. Further, Defendant failed to file and obtain a certificate of
18 qualification and designate its principal place of business in California. As a foreign
19 corporation that is not qualified to do business in California, it may be sued in any county in
20 the state. *Easton v. Superior Court* (1970) 12 CA 3d 243.

21 **THE PARTIES**

22 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants
23 during the Class Period in California.

24 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
25 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
26 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
27 and the State of California.

28 12. Plaintiff is unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to
2 amend this Complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 13. Plaintiff is informed and believes, and thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
6 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
7 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
8 respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

9 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act
12 on the other's behalf. The acts of any and all Defendants were in accordance with, and
13 represent, the official policy of Defendants.

14 15. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein.
16 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions
17 of each and all the other Defendants in proximately causing the damages herein alleged.

18 16. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants are in some manner intentionally, negligently or otherwise responsible for the
20 acts, omissions, occurrences and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

22 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
23 herself and all others similarly situated who were affected by Defendants' Labor Code,
24 Business and Professions Code §§ 17200 and IWC Wage Order violations.

25 18. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

27 19. Plaintiff's proposed classes consists of and is defined as follows:
28

1 California Labor Class

2 All current or former non-exempt California employees of Defendants from
3 four years and 179 preceding the filing of this Complaint.¹

4 20. Members of the California Labor Class described above will be collectively
5 referred to as “Labor Class Members.” Plaintiff reserves the right to establish subclasses, or
6 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
7 specific theories of liability.

8 21. This action has been brought and may properly be maintained as a class action
9 under the California Code of Civil Procedure § 382 because there are common questions of
10 law and fact as to the Class that predominate over questions affecting only individual members
11 including, but not limited to:

- 12 (a) Whether Defendants failed to compensate Plaintiff and Labor Class Members
13 to work off-the-clock, resulting in a failure to pay all minimum wages and
14 overtime wages;
- 15 (b) Whether Defendants deprived Plaintiff and Labor Class Members of compliant
16 meal periods or required Plaintiff and Labor Class Members to work through
17 meal periods without compensation;
- 18 (c) Whether Defendants deprived Plaintiff and Class Members of compliant rest
19 breaks;
- 20 (d) Whether Defendants deprived Plaintiff and Labor Class Members of accurate,
21 itemized wage statements;
- 22 (e) Whether Defendants required Plaintiff and Labor Class Members to use their
23 personal cellular phones to perform work and then failed to reimburse Plaintiff
24 and Labor Class Members for a reasonable percentage of these costs, resulting
25 in failure to reimburse Plaintiff and Labor Class Members for all business
26 expenses necessarily incurred in their duties;

27
28 ¹ The statute of limitations for this matter were tolled for 179 days pursuant to Cal. Rules of
Court, Appendix I, Emergency Rule No. 9.

1 (f) Whether Defendants failed to pay Plaintiff and Class Members all wages due
2 upon separation of employment; and

3 (g) Whether Defendants engaged in unfair business practices in violation of
4 Business & Professions Code §§ 17200, *et seq.*

5 22. There is a well-defined community of interest in this litigation and the
6 California Labor Class are readily ascertainable:

7 (a) Numerosity: The members of the California Labor Class so numerous
8 that joinder of all members is impractical. Although the members of
9 the California Class are unknown to Plaintiff at this time, on
10 information and belief, the total number of individuals who make up
11 the California Labor Class are estimated to be greater than 100
12 individuals. The identities of the California Labor Class are readily
13 ascertainable by inspection of Defendants' employment and payroll
14 records.

15 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of
16 the claims (or defenses, if any) of the California Labor Class because
17 Defendants' failure to comply with the provisions of California wage
18 and hour laws entitled each class member to similar pay, benefits and
19 other relief. The injuries sustained by Plaintiff are also typical of the
20 injuries sustained by the California Labor Class because they arise out
21 of and are caused by Defendants' common course of conduct as alleged
22 herein.

23 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately
24 represent and protect the interests of all members of the California
25 Labor Class and because it is in her best interest to prosecute the claims
26 alleged herein to obtain full compensation and penalties due to her and
27 the California Labor Class. Plaintiff's attorneys, as proposed class
28 counsel, are competent and experienced in litigating large employment

1 class actions and are versed in the rules governing class action
2 discovery, certification and settlement. Plaintiff has incurred and,
3 throughout the duration of this action, will continue to incur attorneys'
4 fees and costs that have been and will be necessarily expended for the
5 prosecution of this action for the substantial benefit of each class
6 member.

7 (d) Superiority: The nature of this action makes the use of class action
8 adjudication superior to other methods. A class action will achieve
9 economies of time, effort and expense as compared with separate
10 lawsuits, and will avoid inconsistent outcomes because the same issues
11 can be adjudicated in the same manner and at the same time for each
12 Class. If appropriate this Court can, and is empowered to, fashion
13 methods to efficiently manage this case as a class action.

14 (e) Public Policy Considerations: Employers in the State of California and
15 other states violate employment, labor, and consumer protection laws
16 every day. Current employees are often afraid to assert their rights out
17 of fear of direct or indirect retaliation. Former employees are fearful
18 of bringing actions because they believe their former employers might
19 damage their future endeavors through negative references and/or other
20 means. Class actions provide the class members who are not named in
21 the complaint with a type of anonymity that allows for the vindication
22 of their rights at the same time as affording them privacy protections.

23 GENERAL ALLEGATIONS

24 23. At all relevant times mentioned herein, Defendants employed Plaintiff and
25 other persons as non-exempt employees.

26 24. Plaintiff was employed in a non-exempt position by Defendants.

27 25. Defendants continue to employ non-exempt employees throughout California.

28 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
2 who were knowledgeable about California's wage and hour laws, employment and personnel
3 practices and the requirements of California law.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
5 or should have known that Plaintiff and Labor Class Members were entitled to receive wages
6 for all hours worked and that they were not receiving all wages earned for work that was
7 required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
8 and Labor Class Members were not paid wages (including minimum wages and overtime
9 wages) when Defendants required Plaintiff and Labor Class Members to work off-the-clock,
10 for example, during meal periods.

11 28. Plaintiff is informed, and believes, and thereon alleges, Defendants failed to
12 pay Plaintiff and Labor Class members all overtime and doubletime and the proper regular
13 rate of pay by failing to include all compensation.

14 29. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
15 provide Plaintiff and Labor Class Members timely, uninterrupted, off-duty meal periods of no
16 less than thirty minutes for each period of five hours worked. Plaintiff and Labor Class
17 Members would also often be required to work through meal periods or would be otherwise
18 interrupted during their meal period. Further, on information and belief, Plaintiff and Labor
19 Class Members did not waive their right to receive meal periods, including second meal
20 periods on eligible shifts. These policies, among others, have resulted in a denial of these
21 employees' rights to 30-minute meal periods in violation of California law.

22 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
23 or should have known that Plaintiff and Labor Class Members were entitled to receive all
24 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Labor
25 Class Members' regular rate of pay when they did not receive a timely meal period. In
26 violation of the Labor Code and IWC Wage Orders, Plaintiff and Labor Class Members did
27 not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff
28 and Labor Class Members' regular rate of pay when they did not receive a timely,

1 uninterrupted meal period.

2 31. Upon information and belief, Defendants failed to provide Plaintiff and Labor
3 Class Members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for
4 every four hours worked, or every major fraction thereof. Defendants also routinely failed to
5 provide Plaintiff and Labor Class Members with a second rest period for shifts lasting longer
6 than six hours, or a third rest period for shifts lasting longer than ten hours. These policies,
7 among others, have resulted in a denial of these employees' rights to a ten-minute rest period
8 in violation of California law.

9 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
10 or should have known that Plaintiff and Labor Class Members were entitled to receive all rest
11 breaks or payment of one (1) additional hour of pay at Plaintiff and Labor Class Members'
12 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
13 Wage Orders, Plaintiff and Labor Class Members did not receive all rest breaks or payment
14 of one (1) additional hour of pay at Plaintiff and Labor Class Members' regular rate of pay
15 when a rest break was missed.

16 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
17 or should have known that Plaintiff and Labor Class Members were entitled to receive
18 itemized wage statements that accurately showed their gross and net wages earned, inclusive
19 dates of pay periods, total hours worked, the correct name of their legal employer, and all
20 applicable hourly rates in effect and the number of hours worked at each hourly rate in
21 accordance with California law. In violation of the Labor Code, Plaintiff and Labor Class
22 Members were not provided with accurate itemized wage statements.

23 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
24 or should have known that they had a duty to indemnify Plaintiff and Labor Class Members
25 for all necessary expenditures or losses incurred in the discharge of their duties, including, for
26 example, Plaintiff and Labor Class Members cellular phone expenses as it related to their
27 employment. In violation of the Labor Code, Defendants did not indemnify Plaintiff and
28 Labor Class Members for the necessary expenses they incurred in the discharge of their duties.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Labor Class Members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Cal. Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order)

36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

37. Cal. Labor Code Sections 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

38. During the relevant time period, Defendants paid Plaintiff and Labor Class Members less than minimum wages when Defendants required Plaintiff and Labor Class Members to work off-the-clock.

39. During the relevant time period, Defendants regularly failed to pay at least minimum wages to Plaintiff and Labor Class Members for all hours worked pursuant to Cal. Labor Code Sections 1194 and 1197.

40. Defendants' failure to pay Plaintiff and Labor Class Members the required minimum wages violate Labor Code 1194 and 1197. Pursuant to these sections, Plaintiff and Labor Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorneys' fees.

41. Pursuant to Labor Code Section 1194.2, Plaintiff and Labor Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Violation of Cal. Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

4 42. Cal. Labor Code Section 1198 and the applicable IWC Wage Order provide
5 that it is unlawful to employ persons without compensating them at a rate of pay either one
6 and one-half or two times the person's regular rate of pay, depending on the number of hours
7 worked by the person on a daily or weekly basis.

8 43. Pursuant to Cal. Labor Code Sections 510 and 1194, during the relevant time
9 period, Defendants were required to compensate Plaintiff and Labor Class Members for all
10 overtime hours worked, calculated at one and one-half (1½) times the regular rate of pay for
11 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
12 the first eight (8) hours of the seventh consecutive work day, with double time after eight (8)
13 hours on the seventh day of any work week, or after twelve (12) hours in any work day.

14 44. Plaintiff and Labor Class Members were non-exempt employees entitled to the
15 protections of Cal. Labor Code Section 510 and 1194.

16 45. During the relevant time period, Defendants failed to pay Plaintiff and Labor
17 Class Members overtime and doubletime wages when Defendants required Plaintiff and
18 Labor Class Members to work off-the-clock, for example, during meal periods. As Plaintiff
19 and Labor Class Members worked shifts of eight hours or more, this unpaid time qualified for
20 overtime premium payment.

21 46. During the relevant time period, Defendants also failed to pay Plaintiff and
22 Labor Class Members all overtime and doubletime wages due at the proper regular rate of pay
23 by failing to include all compensation. For example, Defendants failed to include a "Shine
24 Award – Gross Up" compensation into the regular rate of pay for the pay period of April 3,
25 2022 to April 16, 2022.

26 47. In violation of state law, Defendants have knowingly and willfully refused to
27 perform their obligations and compensate Plaintiff and Labor Class Members for all wages
28 earned as alleged above.

48. Defendants' failure to pay Plaintiff and Labor Class Members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Cal. Labor Code Sections 510 and 1198, and is therefore unlawful.

49. Pursuant to Labor Code Section 1194, Plaintiff and Labor Class Members are entitled to recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Cal. Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

51. Cal. Labor Code Section 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

52. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

53. Cal. Labor Code Section 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

54. Labor Code Section 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not

1 waived.

2 55. During the relevant time period, Plaintiff and Labor Class Members did not
3 receive compliant meal periods for each five hours worked per day.

4 56. Cal. Labor Code Section 226.7(b) and section 11 of the applicable IWC Wage
5 Order require an employer to pay an employee one additional hour of pay for each workday
6 that a meal period is not provided.

7 57. At all relevant times, Defendants often failed to pay Plaintiff and Labor Class
8 Members meal period premiums for meal period violations, at the regular rate of pay including
9 all non-discretionary bonuses, pursuant to Labor Code Section 226.7(b) and section 11 of the
10 applicable IWC Wage Order.

11 58. As a result of Defendants' failure to pay Plaintiff and Labor Class Members
12 an additional hour of pay for each day a meal period was not provided, Plaintiff and Labor
13 Class Members suffered and continue to suffer a loss of wages and compensation.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT REST BREAKS**

16 **(Violation of Cal. Labor Code §§ 226.7; Violation of IWC Wage Order)**

17 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
18 as though fully set forth herein.

19 60. Cal. Labor Code Section 226.7(a) provides that no employer shall require an
20 employee to work during any rest period mandated by the IWC Wage Orders.

21 61. Section 12 of the applicable IWC Wage Order states "every employer shall
22 authorize and permit all employees to take rest periods, which insofar as practicable shall be
23 in the middle of each work period" and the "authorized rest period time shall be based on the
24 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
25 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

26 62. During the relevant time period, Plaintiff and Labor Class Members did not
27 receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.
28 Defendants routinely failed to provide Plaintiff and Labor Class Members with a second rest

1 period for shifts lasting eight hours or longer, or a third rest period for shifts lasting twelve
2 hours or longer.

3 63. Labor Code Section 226.7(b) and section 12 of the applicable IWC Wage
4 Order requires an employer to pay an employee one additional hour of pay at the employee's
5 regular rate of compensation for each workday that the rest period is not provided.

6 64. At all relevant times, Defendants failed to pay Plaintiff and Labor Class
7 Members all rest period premiums at their regular rate of compensation, including all non-
8 discretionary bonuses, due for rest period violations pursuant to Labor Code Section 226.7(b)
9 and section 12 of the applicable IWC Wage Order.

10 65. As a result of Defendants' failure to pay Plaintiff and Labor Class Members
11 an additional hour of pay for each day a rest period was not provided, Plaintiff and Labor
12 Class Members suffered and continue to suffer a loss of wages and compensation.

13 **FIFTH CAUSE OF ACTION**

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

15 **(Violation of Cal. Labor Code § 226; Violation of IWC Wage Order)**

16 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
17 above as though fully set forth herein.

18 67. Cal. Labor Code Section 226(a) requires Defendants to provide each
19 employee with an accurate wage statement in writing showing nine pieces of information,
20 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number
21 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
22 rate basis, (4) all deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
24 dates of the period for which the employee is paid, (7) the name of the employee and the
25 last four digits of his or her social security number or an employee identification number
26 other than a social security number, (8) the name and address of the legal entity that is the
27 employer, and (9) all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee.

1 68. During the relevant time period, Defendants have knowingly and
2 intentionally failed to comply with Cal. Labor Code Section 226(a) on wage statements that
3 were provided to Plaintiff and Labor Class Members. The deficiencies include, among
4 other things, the failure to correctly state the gross and net wages earned, accurate inclusive
5 dates of the pay period, the correct name of Plaintiff's and Labor Class Members' legal
6 employer, and all applicable hourly rates in effect and the number of hours worked at each
7 hourly rate by Plaintiff and Labor Class Members.

8 69. As a result of Defendants' violation of Cal. Labor Code Section 226(a),
9 Plaintiff and Labor Class Members have suffered injury and damage to their statutorily
10 protected rights. Specifically, Plaintiff and Labor Class Members have been injured by
11 Defendants' intentional violation of California Labor Code Section 226(a) because they
12 were denied both their legal right to receive, and their protected interest in receiving,
13 accurate itemized wage statements under California Labor Code Section 226(a). Plaintiff
14 has had to file this lawsuit in order to determine the extent of the underpayment of wages,
15 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to
16 engage in these efforts and incur these costs had Defendants provided the accurate wages
17 earned. This has also delayed Plaintiff's ability to demand and recover the underpayment
18 of wages from Defendants.

19 70. California Labor Code Section 226(a) requires an employer to pay the
20 greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
21 violation occurred, and one hundred dollars (\$100.00) per employee for each violation in
22 subsequent pay periods, plus attorney's fees and costs, to each employee who was injured
23 by the employer's failure to comply with California Labor Code Section 226(a).

24 71. Defendants' violations of California Labor Code Section 226(a) prevented
25 Plaintiff and Labor Class Members from knowing, understanding and disputing the wages
26 paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result
27 of Defendants' knowing and intentional failure to comply with California Labor Code
28 Section 226(a), Plaintiff and Labor Class Members have suffered an injury, and the exact

1 amount of damages and/or penalties is all in an amount to be shown according to proof at
2 trial.

3 72. Plaintiff and Labor Class Members are also entitled to injunctive relief under
4 California Labor Code Section 226(h), compelling Defendants to comply with California
5 Labor Code Section 226 and seek the recovery of attorneys' fees and costs incurred in
6 obtaining this injunctive relief.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

9 **(Violation of Cal. Labor Code §§ 2800, 2802)**

10 73. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 74. Cal. Labor Code Section 2800 provides, in pertinent part, "[a]n employer shall
13 in all cases indemnify his employee for losses caused by the employer's want of ordinary
14 care."

15 75. Cal. Labor Code Section 2802 provides, in pertinent part, "[a]n employer shall
16 indemnify his or her employee for all necessary expenditures or losses incurred by the
17 employee in direct consequence of the discharge of his or her duties..."

18 76. Further, Labor Code Section 2802 additionally provides, in pertinent part:
19 "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs, including
20 but not limited to, attorney's fees incurred by the employee enforcing the rights granted by
21 this section."

22 77. During the relevant time period, Defendants required Plaintiff and Labor Class
23 Members to use their own cellular phones in the discharge of their duties but were not
24 reasonably compensated for these expenses.

25 78. During the relevant time period, Defendants were required to indemnify and
26 reimburse Plaintiff and Labor Class Members for all expenditures or losses caused by the
27 employer's want of ordinary care and/or incurred in direct consequent of the discharge of their
28

1 duties but failed to indemnify and reimburse Plaintiff and Labor Class Members in violation
2 of Labor Codes Sections 2800 and 2802.

3 79. As a direct and proximate result, Plaintiff and Labor Class Members have
4 suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such
5 monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees in
6 seeking to compel Defendants to fully perform their obligations under California law, all to
7 their damage in amounts according to proof at the time of trial.

8 **SEVENTH CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200,**

10 **ET SEQ.**

11 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
12 as though fully set forth herein.

13 81. Defendants' conduct, as alleged herein, has been and continues to be unfair,
14 unlawful and harmful to Plaintiff and Labor Class Members. Plaintiff seeks to enforce
15 important rights affecting the public interest within the meaning of Code of Civil Procedure
16 § 1021.5.

17 82. Defendants' activities, as alleged herein, violates California law and constitute
18 unlawful business acts or practices in violation of California Business and Professions Code
19 Sections 17200, *et seq.*

20 83. A violation of Cal. Business and Professions Code §§ 17200, *et seq.* may be
21 predicated on the violation of any state or federal law.

22 84. Defendants' policies and practices have violated state law in at least the
23 following respects:

24 (a) Failing to pay all minimum wages to Plaintiff and Labor Class Members in
25 violation of Labor Code §§ 1194, 1194.2, and 1197;

26 (b) Failing to pay all overtime wages to Plaintiff and Labor Class Members in
27 violation of Labor Code §§ 510, 1194 and 1198;

28 (c) Failing to provide timely meal periods without paying Plaintiff and Labor

1 Class Members premium wages for every day said meal periods were not provided in violation
2 of Labor Code §§ 226.7 and 512;

3 (d) Failing to authorize or permit rest breaks without paying Plaintiff and Labor
4 Class Members premium wages for every day said rest breaks were not authorized or
5 permitted in violation of Labor Code § 226.7;

6 (e) Failing to provide accurate, itemized wage statements in violation of Labor
7 Code § 226;

8 (f) Failing to reimburse Plaintiff and Labor Class Members for all business
9 expenses incurred in violation of Labor Code §§ 2800 and 2802.

10 85. Defendants intentionally avoided paying Plaintiff and Labor Class Members'
11 wages and monies, thereby creating for Defendants an artificially lower cost of doing business
12 in order to undercut their competitors and establish and gain a greater foothold in the
13 marketplace.

14 86. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and
15 Labor Class Members are entitled to restitution of the wages unlawfully withheld and retained
16 by Defendants during a period that commences four years prior to the filing of the Complaint;
17 an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
18 laws; and an award of costs.

19 **EIGHTH CAUSE OF ACTION**

20 **ENFORCEMENT OF LABOR CODE § 2698 ET. SEQ. ("PAGA")**

21 87. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
22 as though fully set forth herein.

23 88. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
24 provides for a civil penalty to be assessed and collected by the Labor and Workforce
25 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
26 agencies or employees for violation of the code may, as an alternative, be recovered through
27 a civil action brought by an aggrieved employee on behalf of himself and other current or
28 former employees pursuant to the procedures specified in Labor Code § 2699.3.

1 89. Defendants' conduct violates numerous Labor Code sections including, but
2 not limited to, the following:

3 (a) Violation of Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12, 1194, 1197,
4 1198, 2800, and 2802 for failure to timely pay all earned wages (including minimum wages,
5 regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
6 employment and upon separation of employment as herein alleged;

7 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
8 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed
9 meal periods as herein alleged;

10 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
11 and other aggrieved employees and failure to pay premium wages for missed rest periods as
12 herein alleged;

13 (d) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
14 and necessary business expenses of Plaintiff and other aggrieved employees as herein
15 alleged;

16 (e) Violation of Labor Code § 226 for failure to provide accurate, itemized wage
17 statements; and

18 90. Plaintiff is an "aggrieved employee" because she was employed by the
19 alleged violator and had one or more of the alleged violations committed against them, and
20 therefore is properly suited to represent the interests of all other aggrieved employees.

21 91. On November 28, 2022, Plaintiff submitted notice of her claims to the Labor
22 and Workforce Development Agency ("LWDA"). As of the time of this filing, Plaintiff has
23 not received any notice that the LWDA seeks to investigate these claims. As such, Plaintiff
24 has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and
25 is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved
26 employees under PAGA.

27 ///

28 ///

92. PAGA generally imposes a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

93. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

94. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the California Labor Class alleged by Plaintiff;
2. For appointment of Brittany Maiden as the class representative;
3. For appointment of Lebe Law, APLC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For civil penalties against Defendants pursuant to PAGA;
6. For economic and/or special damages in an amount according to proof with interest thereon;
7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 1194 and 2699(g);
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code, IWC Wage Orders, and federal law;
9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each

1 employee acquired by means of any act or practice declared by this Court to be unlawful,
2 unfair or fraudulent and, therefore, constituting unfair competition under California Business
3 and Professions Code §§ 17200, *et seq.*;

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

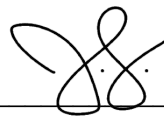
6 12. For injunctive relief;

7 13. For pre-judgment interest; and

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

9
10 DATED: February 2, 2023

Lebe Law, APLC

11
12 By: 
13 Jonathan M. Lebe

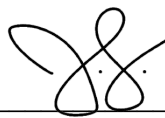
14 Attorney for Plaintiff Brittany Maiden,
15 Individually and on behalf of all others
16 similarly situated

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

19
20 DATED: February 2, 2023

Lebe Law, APLC

21
22 By: 
23 Jonathan M. Lebe

24 Attorney for Plaintiff Brittany Maiden,
25 Individually and on behalf of all others
26 similarly situated

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On February 2, 2023, I served “**FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**” on the interested parties, by placing a true copy thereof, by the method of service specified below:

☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Diana Lopez
Diana Lopez