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ATTACHMENT NAME: Answer: First Amended Complaint		
CASE NAME: Anthony Vargas vs. Elementis Specialties, Inc.		
		CASE NUMBER: CIVSB2224689
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

vs.

ELEMENTIS SPECIALTIES, INC., a
Delaware Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2224689
*[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 Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages (§ 204);
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Elementis Specialties,
5 Inc. 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 May through
12 November 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 wages
17 due to Defendants’ failure to accurately record and compensate for all hours worked. As one
18 such example, Defendants utilized a rounding policy and practice that routinely
19 undercompensated Plaintiff and the Represented Employees and resulted in a net benefit to
20 Defendants and a net loss for Plaintiff and the Represented Employees. In other words,
21 Defendants’ rounding policy is not neutral and results in systematic undercompensation to the
22 Represented Employees for minimum and overtime wages.

23 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and certain
24 non-union Represented Employees (the “Non-Union Subclass”). For example, Defendants paid
25 Plaintiff and the Non-Union Subclass on an hourly basis but also paid additional
26 nondiscretionary compensation. However, during workweeks where the Non-Union Subclass
27 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
28 to include that compensation in the calculations for the regular rate of pay – violating the well-

1 established rule that overtime must always be paid at time and one-half the regular rate of pay.

2 6. Additionally, Defendants frequently required Plaintiff and the Non-Union
3 Subclass to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek without
4 paying proper overtime and doubletime compensation. For example, during Plaintiff's
5 employment, he was routinely required to work twelve-hour shifts (or longer), four days a week,
6 yet he was not paid any overtime or doubletime on such occasions.

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

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

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

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

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

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

13 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
14 monetary relief against Defendants and each of them, on behalf of himself and the Represented
15 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
16 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
18 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
19 additional representatives throughout the State of California.

20 **II. JURISDICTION**

21 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
22 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

23 **III. VENUE**

24 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
25 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
26 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
27 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
28 Employees in San Bernardino County.

1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Anthony Vargas was employed by Defendants
4 from approximately May through November 2022 and performed work for Defendants.

5 **Defendants**

6 17. Plaintiff is informed and believes and thereon alleges that Defendant Elementis
7 Specialties, Inc.: (a) is a Delaware corporation with its principal executive office in Newberry
8 Springs, California (within San Bernardino County), (b) is authorized to and doing business in
9 San Bernardino County, California, and (c) is and/or was the legal employer of Plaintiff and the
10 Represented Employees during the applicable statutory periods.

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

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

25 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
26 Defendants, and each of them, are an integrated enterprise and should be treated as a single
27 employer because these entities share an interrelation of operations, with common human
28 resources and personnel policies and shared common offices and facilities. Additionally,

Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

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

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

V. CLASS ACTION ALLEGATIONS

23. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

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

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

3 27. Plaintiff also seeks to represent the following subclasses:

4 **Non-Union Subclass**

5 All Represented Employees who worked at least one shift
6 for Defendants during the Relevant Time Period while not a
7 member of a union.

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 **Waiting Time Penalties Subclass**

15 All Represented Employees who separated from their
16 employment with Defendants during the period three years
17 before the filing of this action and ending when final
18 judgment is entered.

19 **Wage Statement Penalties Subclass**

20 All Represented Employees during the period one year
21 before the filing of this action and ending when final
22 judgment is entered.

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

25 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
26 seeks to represent.

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

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

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

10 i. Whether Defendants violated the Labor Code and IWC Wage Order by
11 failing to pay wages to Plaintiff and the Represented Employees for all minimum wages owed;

12 ii. Whether Defendants violated the Labor Code and IWC Wage Order by
13 failing to pay proper overtime to Plaintiff and the Non-Union Subclass for hours above 8 and/or
14 12 per day and/or 40 per week worked while such individuals were not a member of a union;

15 iii. Whether Defendants violated the Labor Code and IWC Wage Order by
16 failing to provide compliant meal periods to Plaintiff and the Meal Break Subclass and whether
17 Defendants failed to compensate Plaintiff and the Meal Break Subclass with one additional hour
18 of wages at the regular rate of pay for each instance when a compliant meal period was not
19 provided;

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

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

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

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

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

33. **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.

34. **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.

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

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

5 36. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

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

10 38. Plaintiff and the Represented Employees were not provided proper minimum
11 wages due to Defendants' failure to accurately record and compensate for all hours worked. For
12 instance, Defendants utilized a rounding policy and practice that routinely undercompensated
13 Plaintiff and the Represented Employees and resulted in a net benefit to Defendants and a net
14 loss for Plaintiff and the Represented Employees. In other words, Defendants' rounding policy is
15 not neutral and results in systematic undercompensation to the Represented Employees for
16 minimum wages.

17 39. As a result of this policy and practice, Plaintiff and the Represented Employees
18 were required to perform off-the-clock work that Defendants either knew or should have known
19 they were performing.

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

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

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

1 for each hour worked, yet Defendants chose not to pay them in accordance thereto.

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

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

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

17 *Plaintiff and the Non-Union Subclass Against All Defendants*

18 47. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 48. Plaintiff and the Non-Union Subclass were employees of Defendants who did not
21 receive proper protections and benefits of the laws governing payment of overtime wages.

22 49. The allegations herein relating to unpaid overtime, brought on behalf of the Non-
23 Union Subclass, are restricted to shifts worked for Defendants while not a member of a union.

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

1 in one workday shall be compensated at twice the regular rate of pay for an employee.

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

6 52. For instance, Defendants utilized a rounding policy and practice that routinely
7 undercompensated Plaintiff and the Non-Union Subclass and resulted in a net benefit to
8 Defendants and a net loss for Plaintiff and the Non-Union. In other words, Defendants' rounding
9 policy is not neutral and results in systematic undercompensation to the Non-Union Subclass for
10 overtime wages.

11 53. Furthermore, Defendants paid Plaintiff and the Non-Union Subclass on an hourly
12 basis but also paid additional nondiscretionary compensation. However, during workweeks
13 where the Non-Union Subclass worked overtime hours and earned additional nondiscretionary
14 compensation, Defendants failed to properly include that compensation in the calculations for the
15 regular rate of pay – violating the well-established rule that overtime must always be paid at time
16 and one-half the regular rate of pay.

17 54. Additionally, Defendants frequently required Plaintiff and the Non-Union
18 Subclass to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek without
19 paying proper overtime and doubletime compensation. For example, during Plaintiff's
20 employment, he was routinely required to work twelve-hour shifts (or longer), four days a week,
21 yet he was not paid any overtime or doubletime on such occasions.

22 55. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
23 Non-Union Subclass for all overtime hours worked.

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

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

58. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Non-Union Subclass were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

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

60. During the employment of Plaintiff and the Non-Union Subclass, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

61. As a result of Defendants' wrongful conduct, Plaintiff and the Non-Union Subclass have been damaged in amounts to be proven at trial.

62. Plaintiff, on behalf of himself and the Non-Union Subclass, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass Against All Defendants

63. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

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

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

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

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

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

27 71. On information and belief, Plaintiff and the Meal Break Subclass did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

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

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REST BREAKS**

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

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

18 74. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

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

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

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

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

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

5 84. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 85. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the timing
9 and payment of wages.

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

12 87. 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 88. 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 89. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
20 separation of employment within the time required by Labor Code §§ 201 and 202.

21 90. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
22 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
23 employment, including, but not limited to, minimum wages, overtime wages (as to the Non-
24 Union Subclass), meal and rest period premiums, and sick wages at the proper rate under § 246.

25 91. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
27 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
28 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting

Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

92. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

95. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the start and end dates of the pay period; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the name and address of the legal entity of the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate.

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

breaks under § 226.7.

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

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

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

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

101. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and

one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

SEVENTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

Plaintiff and the Represented Employees against All Defendants

102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

105. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay all wages owed, including minimum wages, overtime wages (as to the Non-Union Subclass), sick wages, failure to provide mandated meal periods and rest breaks, and failure to timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

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

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

5 109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
7 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
8 Code of Civil Procedure § 1021.5.

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

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

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

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

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

12 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code §§ 2698 – 2699.5)**

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

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

24 117. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
25 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
26 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
27 the facts and theories to support the alleged violations. More than sixty-five (65) days have
28 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without

the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

EIGHTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

118. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

120. Plaintiff and the Aggrieved Employees were not provided proper minimum wages due to Defendants' failure to accurately record and compensate for all hours worked. For instance, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit to Defendants and a net loss for Plaintiff and the Aggrieved Employees. In other words, Defendants' rounding policy is not neutral and results in systematic undercompensation to the Represented Employees for minimum wages.

121. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

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

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

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

4 **TENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Non-Union Aggrieved Employees against All Defendants*

8 125. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

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

13 127. The allegations herein relating to unpaid overtime, brought on behalf of the
14 Aggrieved Employees, are restricted to shifts worked for Defendants while not a member of a
15 union.

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

22 129. At all relevant times, Plaintiff and the Non-Union Aggrieved Employees were
23 required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week.
24 However, due to Defendants' failure to accurately record and compensate for all hours worked
25 Plaintiff and the Non-Union Aggrieved Employees did not receive proper overtime
26 compensation.

27 130. For instance, Defendants utilized a rounding policy and practice that routinely
28 undercompensated Plaintiff and the Non-Union Aggrieved Employees and resulted in a net

benefit to Defendants and a net loss for Plaintiff and the Non-Union. In other words, Defendants' rounding policy is not neutral and results in systematic undercompensation to the Non-Union Aggrieved Employees for overtime wages.

131. Furthermore, Defendants paid Plaintiff and the Non-Union Aggrieved Employees on an hourly basis but also paid additional nondiscretionary compensation. However, during workweeks where the Non-Union Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to properly include that compensation in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

132. Additionally, Defendants frequently required Plaintiff and the Non-Union Aggrieved Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek without paying proper overtime and doubletime compensation. For example, during Plaintiff's employment, he was routinely required to work twelve-hour shifts (or longer), four days a week, yet he was not paid any overtime or doubletime on such occasions.

133. As a result of this policy and practice, Defendants failed to pay Plaintiff and the Non-Union Aggrieved Employees for all overtime hours worked.

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

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

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

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PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

Plaintiff and the Aggrieved Employees Against All Defendants

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

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

11 145. 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 REST BREAKS**

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

17 *Plaintiff and the Aggrieved Employees Against All Defendants*

18 146. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

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

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

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

1 150. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
2 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
3 their regular rate of compensation for each day that the rest period is not provided.

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

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

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

19 **TWELFTH CAUSE OF ACTION**

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

21 (Labor Code § 204)

22 *Plaintiff and the Aggrieved Employees Against All Defendants*

23 154. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 155. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
26 of Defendants who did not receive proper protections and benefits of the laws regarding the
27 timing of payment of wages each period.

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1 156. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

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

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

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

16 **THIRTEENTH CAUSE OF ACTION**

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

18 (Labor Code §§ 201 – 203)

19 *Plaintiff and the Aggrieved Employees Against All Defendants*

20 160. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 161. 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 timing and
24 payment of wages.

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

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28 ///

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

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

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

10 166. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
12 including, but not limited to, minimum, regular, and overtime wages, meal and rest period
13 premiums, among other compensation.

14 167. Additionally, at all relevant times, Defendants failed to pay all mandated sick
15 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(1).

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

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

22 **FOURTEENTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR**

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

25 (Labor Code § 226)

26 *Plaintiff and the Aggrieved Employees Against All Defendants*

27 170. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 171. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing the provision of
3 accurate itemized wage statements.

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

10 173. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Aggrieved Employees due to violations including: failure to accurately state total hours
12 worked (for example, the wage statements failed to accurately reflect total compensable hours);
13 failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for
14 example, the failure to pay all required minimum and overtime wages); failure to state the start
15 and end dates of the pay period; failure to state the applicable hourly rates (including the accurate
16 overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately
17 state the name and address of the legal entity of the employer; and failure to accurately state the
18 corresponding number of hours worked at each hourly rate.

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

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

25 **VII. PRAYER FOR RELIEF**

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

1 1. As to the Eighth through Fourteenth Causes of Action, the assessment of all
2 remedies and/or penalties available under the PAGA;

3 2. For reasonable attorneys' fees and costs as permitted under PAGA;

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

5 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

14 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
15 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197,
16 1198, and 1199, among other sections inadvertently omitted;

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

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

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

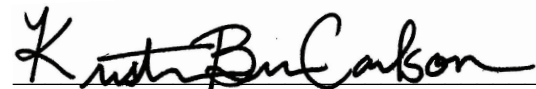
21 **DEMAND FOR JURY TRIAL**

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

24 Dated: March 20, 2023

LAUBY, MANKIN & LAUBY LLP

26 BY:



Brian J. Mankin, Esq.

Kristina Bui Carlson, Esq.

Attorneys for Plaintiff