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Attorneys for Plaintiff Olga Page Piriz, individually,  
and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

OLGA PAGE PIRIZ, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

CARECAR, INC.; and DOES 1-20,  
inclusive,

Defendants.

Case No. 30-2022-01292639-CU-OE-CXC

*Assigned for All Purposes to:*

*Judge Lon F. Hurwitz; Dept. CX103*

**[Amended as a matter of right, pursuant to  
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS 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 Paid Rest Breaks;
5. Failure to Pay Wages Upon Separation of  
Employment and Within the Required  
Time;
6. Failure to Provide Accurate Itemized Wage  
Statements;
7. Failure to Reimburse Necessary Business  
Expenses;
8. Violation of California Business;  
Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.*  
("PAGA")

1 Plaintiff Olga Page Piriz, individually and on behalf of all others similarly situated, alleges  
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Olga Page Piriz (“Plaintiff”) bring this putative class action and  
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698  
6 *et seq.*, against Carecare, Inc., and Does 1 through 20, inclusive (collectively “Defendants”) on behalf  
7 of himself individually and on behalf of a class of Defendants’ non-exempt employees who were  
8 misclassified as independent contractors.

9 2. Defendants are in the business of providing drivers.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic  
11 pattern of wage and hour violations under the California Labor Code (“Labor Code”), all of which  
12 contribute to Defendants’ deliberate unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time  
14 period, Defendants had a consistent policy of violating state wage and hour laws by, among other  
15 things:

- 16 (a) Misclassifying Plaintiff and other workers as independent contractors;
- 17 (b) Failing to pay all wages for all hours worked, including minimum and  
18 overtime wages;
- 19 (c) Failing to authorize or permit rest breaks or provide compensation in lieu  
20 thereof;
- 21 (d) Failing to provide meal periods or compensation in lieu thereof;
- 22 (e) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 23 (f) Failing to pay all wages due upon separation of employment; and
- 24 (g) Failing to reimburse all business expenses incurred by class members in direct  
25 consequence of the discharge of his or her duties.

26 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of  
27 himself and all others similarly to recover, among other things, unpaid wages and benefits, interest,  
28 attorney’s fees, costs and expenses and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210,

221, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

6. Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code sections 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

### **JURISDICTION AND VENUE**

7. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

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

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

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county, or acts and omissions alleged herein took place in this county.

### **THE PARTIES**

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

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 20, inclusive, are currently unknown to Plaintiff, who

1 therefore sue said Defendants by such fictitious names under California Code of Civil Procedure  
2 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants  
3 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to  
4 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

6 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are  
9 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
10 employers and/or joint employers of Plaintiff and the class members.

#### 11 **CLASS ACTION ALLEGATIONS**

12 15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself  
13 and all other members of the general public similarly situated who were affected by Defendants'  
14 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

15 16. All claims alleged herein arise under California law for which Plaintiff seeks relief  
16 authorized by California law.

17 17. Plaintiff's proposed Class consists of and is defined as follows:

##### 18 Class

19 All California citizens who performed driver work for Defendants in the  
20 State of California, who were misclassified as independent contractors from  
21 May 27, 2018<sup>1</sup> to the date of class certification.

22 18. Plaintiff also seeks to certify the following Subclass:

##### 23 Waiting Time Subclass

24 All members of the Class whose working relationship with Defendants was  
25 severed at any time from May 27, 2019 to the date the Subclass is certified.  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020,  
pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1           19.     Members of the Class and Subclass described above will collectively be referred to  
2 as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify  
3 any Class or Subclass definition, as appropriate based on investigation, discovery and specific  
4 theories of liability.

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

- 9                   a.     Whether Defendants misclassified Plaintiff and class members as independent  
10                   contractors rather than non-exempt employees;
- 11                   b.     Whether Defendants failed to pay at least minimum wage for all hours worked  
12                   by Plaintiff and class members;
- 13                   c.     Whether Defendants failed to pay overtime wages earned by Plaintiff and  
14                   class members;
- 15                   d.     Whether Defendants failed to provide Plaintiff and class members with meal  
16                   periods;
- 17                   e.     Whether Defendants deprived Plaintiff and class members of paid rest breaks  
18                   or required Plaintiff and class members to work through rest breaks without  
19                   compensation;
- 20                   f.     Whether Defendants failed to pay all wages to Plaintiff and class members for  
21                   time spent in rest breaks;
- 22                   g.     Whether Defendants failed to timely pay Plaintiff and class members all  
23                   earned wages during their employment;
- 24                   h.     Whether Defendants failed to timely pay Plaintiff and former class members  
25                   all wages due upon termination or within 72 hours of resignation;
- 26                   i.     Whether Defendants failed to furnish Plaintiff and class members with  
27                   accurate itemized wage statements;

- j. Whether Defendants required Plaintiff and class members to incur expenses to perform their job duties without reimbursement;
- k. Whether Defendants required Plaintiff and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due him and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the

1 duration of this action, will continue to incur attorneys' fees and costs that  
2 have been and will be necessarily expended for the prosecution of this action  
3 for the substantial benefit of each class member.

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

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

## 20 **GENERAL ALLEGATIONS**

21 22. Plaintiff performed driver services for Defendants during the relevant time period.  
22 During the relevant time period, Plaintiff was classified by Defendants as an independent contractor.

23 23. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
24 herein, Defendants were advised by skilled lawyers, employees and other professionals who were  
25 knowledgeable about California wage and hour law, employment and personnel practices and the  
26 requirements of California.

27 ///

28 ///

1           24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic  
2 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of  
3 which contribute to Defendants' deliberate unfair competition.

4           25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
5 should have known that Plaintiff and class members were entitled to receive wages for all time  
6 worked (including minimum and overtime wages) and that they were not receiving all wages earned  
7 for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders,  
8 Plaintiff and class members were not paid wages (including minimum and overtime wages) for all  
9 hours worked when Defendants failed to pay or underpaid Plaintiff and class members for all hours  
10 worked, among other things.

11           26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and class members were entitled to receive all rest breaks or  
13 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a  
14 rest break was missed, and were entitled to payment of wages for time spent when rest breaks were  
15 taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not  
16 receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members'  
17 regular rate of pay when a rest break was missed.

18           27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
19 should have known that Plaintiff and class members were entitled to receive all meal periods or  
20 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when  
21 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC  
22 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)  
23 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive  
24 a timely, uninterrupted meal period.

25           28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and class members were entitled to timely payment of wages during  
27 their employment. In violation of the California Labor Code, Plaintiff and class members did not  
28 receive payment of all wages within permissible time periods.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Waiting Time class members were entitled to timely payment of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and Waiting Time class members did not receive payment of all wages including, but not limited to, unpaid wages within permissible time periods.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and class members were not furnished with complete and accurate wage statements showing their total hours worked, rate of pay, employer name, employer address, employee name, employee identification number, number of hours or pieces worked at each hourly or piece rate, and gross and net wages, among other things.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to reimbursement for necessary expenditures incurred in connection with the performance and execution of their job duties. In violation of the California Labor Code, Plaintiff and class members did not receive adequate reimbursement for necessary business expenses, including but not limited to reimbursement for use of personal vehicles and cell phones for work purposes.

32. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class members, and that 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.

33. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on behalf of himself and all class members to recover, among other things, unpaid wages, interest, attorneys' fees, penalties, reimbursements, costs and expenses.

### FIRST CAUSE OF ACTION

## FAILURE TO PAY MINIMUM WAGES

**(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197)**

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

35. Labor Code §§ 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.

36. During the relevant time period, failed to pay Plaintiff and class members all minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time spent in rest breaks, among other reasons. Plaintiff and class members were not being paid at least minimum wage for their work.

37. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

38. Defendants' failure to pay Plaintiff and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

39. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

## SECOND CAUSE OF ACTION

### FAILURE TO PAY OVERTIME

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

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

41. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

42. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and

1 one-half times (1½) their regular rate of pay when working and for all hours worked in excess of  
2 eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8)  
3 hours of work on the seventh day of work in a workweek.

4 43. The applicable IWC Wage Orders further provide that Defendants are and were  
5 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their  
6 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day  
7 or in excess of eight (8) hours on the seventh day of work in a workweek.

8 44. California Labor Code § 510 codifies the right to overtime compensation at one and  
9 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day  
10 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive  
11 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess  
12 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in  
13 a workweek.

14 45. Labor Code § 510 and the applicable IWC Wage Orders provide that employment  
15 of more than six days in a workweek is only permissible if the employer pays proper overtime  
16 compensation as set forth herein.

17 46. Plaintiff and Class Members were non-exempt employees entitled to the protections  
18 of California Labor Code §§ 510 and 1194.

19 47. During the relevant time period, Defendants failed to pay Plaintiff and Class  
20 Members overtime wages for all overtime hours worked when Plaintiff and Class Members  
21 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh  
22 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess  
23 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a  
24 work week.

25 48. In violation of state law, Defendants knowingly and willfully refused to perform  
26 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours  
27 worked.  
28

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

50. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

### THIRD CAUSE OF ACTION

## **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

53. Section 11 of the applicable IWC Wage Order states, “[n]o 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.”

54. Labor Code § 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.

55. Labor Code § 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 waived.

1           56. During the relevant time period, Plaintiff and Class Members did not receive  
2 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their  
3 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second  
4 meal period.

5           57. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires  
6 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of  
7 compensation for each work day that a compliant meal period is not provided.

8           58. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal  
9 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §  
10 226.7(b) and section 11 of the applicable IWC Wage Order.  
11 As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for  
12 each day a compliant meal period was not provided, Plaintiff and Class Members suffered and  
13 continue to suffer a loss of wages and compensation

14                                   **FOURTH CAUSE OF ACTION**

15                                   **FAILURE TO PERMIT REST BREAKS**

16                                   **(Violation of Labor Code § 226.7)**

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

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

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

26           62. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage  
27 Order "shall be counted as hours worked, for which there shall be no deduction from wages."  
28

63. During the relevant time period, Plaintiff and class members did not receive a ten (10) minute net rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

64. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

65. At all relevant times, Defendants failed to pay Plaintiff and class members the full rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

66. As a result of Defendants' failure to pay Plaintiff and class members an additional hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

#### **FIFTH CAUSE OF ACTION**

#### **FAILURE TO PAY WAGES UPON SEPARATION**

#### **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

#### **(Violations of Labor Code §§ 201, 202, 203, 204, and 210)**

67. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

68. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

69. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

70. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

71. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

72. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

73. Based on these violations, Plaintiff and the Waiting Time Subclass they seek to represent request relief as described herein and below.

## SIXTH CAUSE OF ACTION

### **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

**(Violation of Labor Code § 226)**

74. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

75. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, 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.

76. Defendants have intentionally and willfully failed to provide Plaintiff and class members with complete and accurate wage statements. The deficiencies include, among other things,

1 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly  
2 rates in effect during the pay period.

3 77. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and  
4 class members have suffered injury and damage to their statutorily protected rights. Specifically,  
5 Plaintiff and class members have been injured by Defendants' intentional violation of California  
6 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected  
7 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In  
8 addition, because Defendants failed to provide the accurate rates of pay on wage statements,  
9 Defendants have prevented Plaintiff and class members from determining if all hours worked were  
10 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit  
11 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,  
12 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in  
13 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also  
14 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

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

20 79. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and  
21 class members from knowing, understanding and disputing the wages paid to them, and resulted in  
22 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and  
23 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have  
24 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown  
25 according to proof at trial.

26 80. Plaintiff and class members are also entitled to injunctive relief under California  
27 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek  
28 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

3 **(Violation of Labor Code §§ 2800, 2802)**

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

6 82. Labor Code § 2800 states that an employer shall in all cases indemnify its employee  
7 for losses.

8 83. Labor Code § 2802 requires employers to indemnify their employees for all  
9 necessary expenditures or losses incurred by employees in direct consequence of the discharge of  
10 their duties.

11 84. Section 9 of the applicable IWC Wage Order states that when tools or equipment  
12 are required by the employer or are necessary to the performance of a job, such tools and equipment  
13 shall be provided and maintained by the employer.

14 85. During the relevant time period, Defendants required Plaintiff and class members to  
15 use their personal vehicles and personal cell phones for work, without properly compensating them.

16 86. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify  
17 Plaintiff and class members for these expenses.

18 87. In committing the violations as herein alleged, Defendants have intentionally and  
19 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs  
20 and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer  
21 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and  
22 attorney's fees.

23 **EIGHTH CAUSE OF ACTION**

24 **UNFAIR BUSINESS PRACTICES**

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

26 88. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
27 though fully set forth herein.

28 ///

1           89.     California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair  
2 competition, which includes any "unlawful, unfair or fraudulent business act or practice . . . ."

3           90.     A violation of California Business and Professions Code §§ 17200, *et seq.* may be  
4 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and  
5 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer  
6 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in  
7 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum  
8 wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay  
9 wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing  
10 upon separation of employment and in a timely manner, failing to furnish accurate wage statements,  
11 and failing to reimburse business expenses, all in order to decrease their costs of doing business and  
12 increase their profits.

13           91.     At all times relevant herein, Defendants intentionally avoided paying Plaintiff and  
14 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing  
15 business in order to undercut their competitors and establish and/or gain a greater foothold in the  
16 marketplace.

17           92.     At the time Plaintiff and class members were hired, Defendants knowingly,  
18 intentionally and wrongfully misrepresented to each of them their conformance with the California  
19 Labor Code and IWC Wage Orders including proper payments required by law.

20           93.     At all relevant times herein, Defendants held themselves out to Plaintiff and class  
21 members as being knowledgeable concerning the labor laws of California.

22           94.     At all times relevant herein, Plaintiff and class members relied on and believed  
23 Defendants' representations concerning their conformance with California's wage and hour laws all  
24 to their detriment.

25           95.     As a result of Defendants' intentional, willful, purposeful and wrongful  
26 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,  
27 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown  
28 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,

Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

96. Defendants' violations of the California Labor Code and IWC Wage Orders and their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because they were done in a systematic manner over a period of time to the detriment of Plaintiff and class members.

97. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

98. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

#### **NINTH CAUSE OF ACTION**

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

99. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

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

101. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay  
2 period in which Defendants violated these provisions of the Labor Code.

3 102. Defendants' conduct violates numerous Wage Order and Labor Code sections,  
4 including, but not limited to, the following:

- 5 (a) violation of Labor Code § 226.8 for misclassification of employees as  
6 independent contractors;
- 7 (b) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,  
8 1197, and 1198 for failure to timely pay all earned wages (including  
9 minimum wage and overtime wages) owed to Plaintiff and other aggrieved  
10 employees during employment and upon separation of employment as herein  
11 alleged;
- 12 (c) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods  
13 to Plaintiff and other aggrieved employees and failure to pay premium wages  
14 for missed meal periods as herein alleged;
- 15 (d) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff  
16 and other aggrieved employees and failure to pay premium wages for missed  
17 rest periods as herein alleged;
- 18 (e) violation of Labor Code § 226 for failure to provide accurate itemized wage  
19 statements to Plaintiff and other aggrieved employees as herein alleged;
- 20 (f) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate  
21 and complete records showing, among other things, the hours worked daily  
22 by and the wages paid to aggrieved employees; and
- 23 (g) violation of Labor Code §§ 221, 2800, and 2802 for failure to reimburse  
24 Plaintiff and other aggrieved employees for necessary business expenses and  
25 improper deduction of business costs from wages as herein alleged.

26 103. Plaintiff is an "aggrieved employee" because she was employed by the alleged  
27 violator and had one or more of the violations committed against her, and therefore is properly suited  
28 to represent the interests of all other aggrieved employees.

104. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

105. 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.

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

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;

2. For appointment of Olga Page Piriz as the class representative;

3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

4. For general damages;

5. For special damages;

6. For liquidated damages pursuant to California Labor Code § 1194.2;

7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;

8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;

10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;

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

3           12.     For pre-judgment interest;

4           13.     For civil penalties;

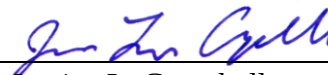
5           14.     For reasonable attorney's fees and costs of suit to the extent permitted by law,  
6 including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code  
7 §§ 226(e), 1194, 2802(c), and 2698 et seq.; and

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

9  
10       Dated: March 14, 2023

**AEGIS LAW FIRM, PC**

11  
12       By: \_\_\_\_\_

  
13                   Jessica L. Campbell  
14                   Attorneys for Plaintiff