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

AMBER WILLIS, an individual, on behalf
of herself and all others similarly situated,

Plaintiff,

v.

CATAPULT STAFFING SERVICES, LLC,
a Texas business entity; TOYOTA MOTOR
NORTH AMERICA, INC., a California
corporation, and DOES 1 through 25,
Inclusive,

Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
5/17/2024 3:48 PM
By: Janelle Martinez, DEPUTY

Case No.: CIVSB2410117

FIRST AMENDED CLASS & REPRESENTATIVE
ACTION COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff, AMBER WILLIS (“Plaintiff”), by and through her attorneys, brings this action on
2 behalf of herself, and all other similarly situated non-exempt employees who are or were employed
3 in California by CATAPULT STAFFING SERVICES, LLC (“Catapult”), TOYOTA MOTOR
4 NORTH AMERICA, INC. (“Toyota”) and DOES 1 through 25 (collectively “Defendants”), inclusive
5 between four years prior to the date of the filing of this action¹ through the date of final disposition
6 of this action (class period), and for all aggrieved employees from November 21st, 2022 and
7 continuing through the date of the final disposition of this action. Plaintiff hereby alleges, on
8 information and belief, except for information based on personal knowledge, which allegations are
9 likely to have evidentiary support after further investigation and discovery, as follows:

10 **INTRODUCTION**

11 1. This California-based class and representative action is brought on behalf of Plaintiff,
12 the Class², and Aggrieved Employees because of Defendants’ systematic mistreatment of their
13 employees, in violation of California’s wage and hour laws.

14 2. Defendants operate a warehouse facility or facilities in the state of California and
15 employ numerous employees at those facilities. Specifically, Plaintiff worked for Defendants at their
16 parts warehouse distribution center facility in Ontario, California.

17 3. Employees were required to work off-the-clock. Employees, including Plaintiff, were
18 required to go through security and walk long distances before clocking in and being paid.
19 Additionally, employees including Plaintiff, also regularly did work setting up and putting away
20 equipment while off of the clock.

21 4. Additionally, the Defendants use a quota system which is illegal under Labor Code
22 section 2100, et seq. This quota timed employees, including Plaintiff, in selecting and moving
23 products in the warehouse, but did not provide “compensable time” to use the restroom and to conduct
24 necessary safety activities or conform to Cal OSHA regulations, and prevented employees, including
25 Plaintiff, from taking legally adequate rest and meal breaks. The quota did not allow “productive”
26 time to using the bathroom. This meant that if employees, including Plaintiff, used the restroom it

27 ¹ This action was first filed on January 24, 2024. However, Plaintiff asserts tolling to the date she sent the letter required
28 under Labor Code section 2810.3 alleging joint liability for wages unpaid between a principal and labor contractor
employer(s). Plaintiff’s letter is attached to this First Amended Class and Representative Action Complaint as Exhibit 1.

² The “Class” is defined in paragraphs 58-62.

1 would count against them in the quota system. Accordingly, employees, including Plaintiff, would
2 only use the bathroom during rest breaks, but the travel time to the restroom and back made it
3 impossible to use the bathroom during rest breaks.

4 5. Under the Labor Code, Defendants are prohibited from disciplining employees under
5 the quota or for performance under the quota. Despite this Defendants have and do discipline
6 employees, including Plaintiff, under the quota, up to and including termination. Specifically,
7 Plaintiff was terminated for performance under the quota.

8 6. Additionally, Defendants only provided minimal time for rest and meal breaks but the
9 facility was very large, such that employees including Plaintiff, could not travel to break areas and
10 still take full breaks during the time allotted for breaks by the Defendants.

11 7. Furthermore, Defendants failed to provide accurate wage statements and maintain
12 adequate records and failed to pay all wages owed upon termination of employment.

13 8. Upon information and belief, the above practices are uniform at the facility(ies) in the
14 State of California and are still ongoing.

15 9. In order to redress the harms suffered, Plaintiff, on behalf of herself and the Class,
16 brings claims associated with Defendants' violations of the California Labor Code and the applicable
17 IWC Wage Order, including: (1) failure to pay all minimum, regular rate and overtime wages for off-
18 the-clock work; (2) failure to provide meal periods in violation of Labor Code §§226.7 and 512; (3)
19 failure to provide rest periods in violation of Labor Code §226.7; (4) Failure to reimburse expenses
20 incurred in the performing of employment duties under Labor Code §2802; (5) failure to provide
21 accurate wage statements in violation of Labor Code §226; (6) failure to timely pay wages when due
22 at termination in violation of Labor Code §§201 and 202; (7) violation of the Unfair Competition Law
23 ("UCL") pursuant to Business & Professions Code §17200, et seq.; (8) failure to comply with
24 California quota laws in violation of Labor Code § 2100 *et seq.*; and (9) Wrongful Termination in
25 violation of public policy as articulated in Labor Code § 2100, et seq..

26 10. Plaintiff also brings on behalf of herself and all other aggrieved employees, a claim
27 under the Private Attorneys General Act of 2004 as codified in Labor Code §§ 2698, et seq. ("PAGA")
28

1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction over all causes of action asserted herein pursuant to the
3 California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial
4 courts. The damages sought by Plaintiff totals more than this Court's jurisdictional minimum.

5 12. Plaintiff is a citizen of California because her domicile is in California.

6 13. This Court has personal jurisdiction over Defendant Toyota because Defendant Toyota
7 has its principal place of business in California, has conducted and continues to conduct substantial
8 business in California, employs numerous individuals in California, and has intentionally availed
9 itself of the laws and markets of California through the operation of its business in California.

10 14. This Court has personal jurisdiction over Defendant Catapult because Defendant
11 Catapult has conducted and continues to conduct substantial business in California, employs
12 numerous individuals in California, and has intentionally availed itself of the laws and markets of
13 California through the operation of its business in California.

14 15. Venue is proper in this Court because Defendants employ numerous individuals in
15 this county, including Plaintiff. Further, Plaintiff resides in this county, and a substantial portion of
16 the acts giving rise to this action occurred in this county.

17 16. This case is not subject to removal under the Class Action Fairness Act ("CAFA"), 28
18 U.S.C. § 1332(d), because 1) more than two-thirds of class members are citizens of California; 2)
19 Defendant Toyota is a defendant from whom significant relief is sought by class members, its
20 alleged conduct forms a significant basis for the claims asserted by the proposed class and it is a
21 citizen of California; 3) the principal injuries resulting from the conduct of Defendants were
22 incurred in California; and 4) within the past three years, no other class action has been filed
23 asserting the same or similar factual allegations against any of the Defendants on behalf of the same
24 or other persons.

25 **PARTIES**

26 **A. PLAINTIFF**

27 17. Plaintiff is an individual over the age of eighteen years, and at all times relevant herein
28 was and is, a resident of the County of San Bernadino in the State of California.

1 18. During the Class Period, Plaintiff worked at one of Defendants' facilities in Ontario,
2 California. Plaintiff was employed by Defendants from in or around February, 2023 through in or
3 around April 12, 2023.

4 **B. DEFENDANT**

5 19. Defendant Catapult is a Texas LLC with its principal place of business in the State of
6 Texas.

7 20. On information and belief, Catapult is a labor contractor, which provides employees to
8 other businesses, in this instance, Toyota.

9 21. Defendant Toyota is a California corporation, which operates a warehouse facility in
10 Ontario, California, and may operate other warehouse facilities in the State of California, and employs
11 numerous employees in those distribution warehouse facilities.

12 22. Based on information and belief, Defendants each had the authority to, directly or
13 indirectly, or through an agent or other person, employ or exercise control over Plaintiff's and the
14 Class's wages, hours, and working conditions.

15 23. Based on information and belief, Defendants had knowledge of the wage-and-hour
16 violations alleged herein and had the power to prevent the violations from occurring. Having
17 knowledge of the wage-and-hour violations set forth in this Complaint, Defendants could have but
18 failed to prevent the violations from occurring.

19 24. Upon information and belief, Toyota is also vicariously liable under Labor Code §
20 2810.3 for Catapult's failure to pay wages. Upon information and belief, Toyota is a "client employer"
21 and Catapult is a labor contractor under the Labor Code, for the purposes of Plaintiff's employment,
22 and the employment of the members of the Class.

23 25. Plaintiff does not know the true names and capacities of defendants sued herein as
24 DOES 1 through 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
25 this Complaint to allege the true names and capacities when they are ascertained.

26 26. Plaintiff believes and thereon alleges that each "Doe" defendant is responsible in some
27 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are
28 directly, proximately and/or legally caused by such defendant and its acts.

1 27. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES
2 are somehow responsible for the acts alleged herein as the agents, employers, representatives or
3 employees of the named Defendants, and in doing the acts herein alleged were acting within the scope
4 of their agency, employment or representative capacity of said named Defendants.

5 28. The tortious acts and omissions alleged herein were performed by Defendants'
6 management level employees. Defendants allowed and/or condoned a continuing pattern of unlawful
7 practices in violation of the California Labor Code, and has caused, and will continue to cause,
8 Plaintiff's economic damage in an amount to be proven at trial.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10 29. Defendants operate distribution warehouses in Ontario, California, and may operate
11 additional warehouse facilities throughout the State of California. Workers at those warehouses are
12 provided with lifts and or carts, and are given assignments to complete. The assignments consist of
13 driving their lift or moving their cart up and down aisles in enormous warehouses, taking items off
14 the shelves and loading them onto pallets to be ultimately shipped.

15 **Off-the-clock Work**

16 30. Employees are also required to work time off-the-clock both before and after their
17 shifts.

18 31. Employees are required to go through security checks and walk long distances in the
19 warehouse prior to being clocked in when arriving to work and after being clocked out when leaving
20 work.

21 32. Plaintiff and other Class members are required to be ready to start their assignments at
22 the starting time of their shift. If they are not ready, they are disciplined by Defendant.

23 33. Accordingly, employees are required to arrive early to their shifts in order to claim and
24 set up their equipment (cart or lift) for the day and prepare it so they can start their assignments on
25 time. However, employees are not allowed to clock in until the start time of their shifts. This results
26 in unpaid off-the-clock work.

27 **Meal Breaks**

28 34. Defendants utilize a system in which the employee's workday is controlled by a

1 computer on the employee's cart or lift. The computer provides the assignments and tracks the
2 employee's performance rate on the assignments.

3 35. Employees are given a limited amount of time to complete each assignment. If they do
4 not complete their assignments within the time allotted, they receive lower scores, are reprimanded
5 and can be terminated.

6 36. This system prevents employees from being able to take their meal and rest breaks.

7 37. The system requires employees to state that they are taking a meal break in order to
8 pause the current assignment or avoid being assigned another assignment if the previous one was
9 complete. Once the employee notifies the headset that he or she would like to take a meal break, the
10 system begins a 45- minute meal period countdown.

11 38. However, in order to clock out for the break, the employee must still clock out on a
12 time clock at the breakroom. It takes several minutes to go to the break room and the same amount
13 of time to return after the break. Because an employee is required to take a 45-minute meal break on
14 the time clock, this results in the system recording more than the 45 minutes for a meal break and the
15 employee is penalized for the extra minutes on his or her performance.

16 39. Because employees are counseled, written up and terminated for even small
17 performance rate issues, this results in employees not taking their breaks.

18 40. Upon information and belief, Defendants modify the time records to reflect that a break
19 was taken when it was not.

20 41. Plaintiff and Class members are owed premiums for all of these missed meal periods.

21 **Rest Breaks**

22 42. For rest breaks, employees are allocated 15 minutes for each rest break.

23 43. When an employee wants to take a rest break, he or she informs the headset that he or
24 she would like to take a break. The system begins counting the 15 minutes.

25 44. However, it takes the employee several minutes each way to go to and from either the
26 restroom or the break room.

27 45. As a result, Plaintiff and Class members are provided with an inadequate amount of
28 time to take breaks.

1 46. Additionally, in contradiction to the requirements of the Labor Code, the Defendants'
2 quota system does not provide time for use of the restroom. If an employee stops to use the restroom
3 during work time, he or she will have the time it takes to use the restroom counted against their
4 performance. As such, employees go to the restroom on their rest breaks. However, due to the limited
5 number of restrooms available and the distance restrooms are from work areas, it takes longer than
6 the 15 minute time allotted for rest breaks to use the restroom and return.

7 47. Plaintiff and Class members are owed premiums for those missed rest periods.

8 **Failure to Reimburse Expenses**

9 48. Defendants require employees to wear steel toed boots, but do not adequately
10 compensate employees for the costs of procuring those boots.

11 **Wage Statements**

12 49. Because of Defendants' failure to record all hours worked and failure to pay all wages
13 and premiums owed, the wage statements they issue to employees are incorrect.

14 50. The wage statements also do not accurately state the name and address of the employer.

15 **Failure to Pay all Wages at Termination of Employment**

16 51. When Plaintiff's employment with Defendants ended, Defendants failed to pay her all
17 money that she was owed, as a result of not paying her for off-the-clock work, not paying wages at
18 legally required rates and not paying meal and rest break premiums as alleged above.

19 **Illegal Discipline and Termination under the Quota**

20 52. Defendants' quota system is illegal and unenforceable because it prevents meal and
21 rest breaks, and because it does not allot "productive time" to use of the restroom and performance
22 of necessary safety checks on equipment prior to shifts. However, Defendants still disciplined
23 employees, including Plaintiff for failing to perform under the quota.

24 53. Defendants terminated Plaintiff for failing to perform under the quota. Upon
25 information and belief Defendants disciplined up to and including terminating other employees for
26 failing to perform under the quota.

27 54. Plaintiff and similarly situated employees are due lost wages, reinstatement and
28 emotional distress damages.

55. Plaintiff is informed and believes that the above practices she experienced were not unique to her but rather were companywide policies and practices at all distribution facilities in the State of California and were suffered by all non-exempt employees.

56. Plaintiff is informed and believes that the unlawful wage and hour policies described in this action are set centrally and are applicable through-out California.

57. Plaintiff is informed and believes that the unlawful wage and hour policies described in this action are still ongoing.

CLASS ACTION ALLEGATIONS

58. Plaintiff brings this class action pursuant to CCP § 382, on behalf of the following Class:

All Non-Exempt current and former employees who were employed at a Toyota distribution facility in California during the Class Period.

59. Plaintiff brings a subclass for wrongful termination, for a class of:

All Non-Exempt current and former employees who were employed at a Toyota distribution facility in California during the Class Period, and who were terminated due to performance under the quota system during the Class Period.

60. “Non-Exempt” means employees that are not exempt from California wage and hour laws pursuant to Labor Code §515(a); 8 Cal. C. Regs. §11010, et seq.

61. “Class Period” means the period from four years prior to the filing of this action through the date of final disposition of this action. Additionally, Plaintiff alleges tolling as described in footnote 1.

62. Excluded from the Class are Defendants, their officers and directors, families and legal representatives, heirs, successors, or assigns and any entity in which Defendants have a controlling interest, and any Judge assigned to this case and their immediate families.

1 63. Plaintiff reserves the right to amend or modify the definition of the Class to provide
2 greater specificity and/or further division into subclasses or limitation to particular issues.

3 64. **Numerosity:** The members of the Class are so numerous that joinder of all members is
4 impracticable. The exact number or identification of class members is presently unknown, but it is
5 believed that there are several thousand class members in the Class. The identity of the Class Members
6 is ascertainable and can be determined based on records maintained by Defendants.

7 65. **Predominance of Common Questions:** There are multiple questions of law and fact
8 common to the Class that will predominate over questions affecting only individual class members.
9 The questions of fact that are common to the Class members and predominate over questions that
10 may affect individual Class members, include, whether Defendants:

- 11 a) Failed to pay Plaintiff and members of the Class all of their earned wages and
12 compensation;
- 13 b) Failed to authorize and permit Plaintiff and members of the Class to take all rest
14 periods to which they were entitled by the applicable laws;
- 15 c) Failed to provide Plaintiff and members of the Class the opportunity to take all meal
16 periods to which they were entitled by the applicable laws;
- 17 d) Failed to track Class members' meal periods;
- 18 e) Failed to pay Plaintiff and members of the Class one hour of pay at their regular rate
19 of compensation for each earned rest period not permitted and/or each earned meal
20 period not provided;
- 21 f) Failed to timely pay Plaintiff and members of the Class all their earned wages and
22 compensation;
- 23 g) Failed to furnish to Plaintiff and members of the Class accurate, itemized wage
24 statements compliant with Labor Code §226;
- 25 h) Failed to timely pay Plaintiff and members of the Class all of their earned wages,
26 compensation and benefits immediately upon termination of their employment or
27 within seventy-two hours of them quitting; and/or
- 28 i) Failed to reimburse employees for the purchase of steel-toed boots.

- 1 j) Used an illegal quota system, and wrongfully took adverse action against Class
2 members under that quota system.

3 66. The questions of law that are common to the Class members and predominate over
4 questions that may affect individual Class members, include:

- 5 a) Whether the provisions of the Labor Code include the employer's obligation to pay all
6 earned wages and to pay all such earned wages at the time of the termination of a
7 member of the Class's employment;
- 8 b) Defendants' legal obligation to permit members of the Class to take paid rest periods
9 of ten (10) consecutive, uninterrupted minutes for shifts of at least four hours or major
10 fraction thereof and a second rest period for shifts in excess of six hours;
- 11 c) Defendants' legal obligation to provide members of the Class the opportunity to take
12 meal periods of thirty (30) consecutive, uninterrupted minutes for shifts in excess of
13 five hours and a second meal period for shifts in excess of ten hours;
- 14 d) The Class members' entitlement to one hour of pay at the members' regular rate of
15 compensation for each paid ten (10) consecutive minute, uninterrupted, rest period that
16 Defendants did not permit the Class members to take;
- 17 e) The Class members' entitlement to one hour of pay at his/her regular rate of
18 compensation for each thirty (30) consecutive minute, uninterrupted, meal period that
19 Defendants did not provide;
- 20 f) The requirements for a wage statement to be compliant with Labor Code §226;
- 21 g) Whether Toyota is a client employer under Labor §2810.3, and is therefore jointly
22 liable for unpaid wages;
- 23 h) Whether Toyota and Catapult are joint employers and therefore jointly liable for illegal
24 adverse employment actions taken under the quota system; and/or
- 25 i) What remedies, including restitution, compensatory damages, statutory and civil
26 penalties, additional wages and disgorgement of revenue, are available under
27 California law to members of the Class who were not paid all earned wages,
28 compensation and benefits; were not timely paid all earned minimum, regular and

overtime wages, compensation and benefits; were not paid all wages and premium compensation earned at the time of the termination of their employment relationship with Defendant; were not provided lawful wage statements; were not permitted to take earned ten (10) minute rest periods; were not provided earned thirty (30) minute meal periods;

67. **Typicality:** Plaintiff's claims are typical of the claims of the Class because Plaintiff and all putative Class members were subject to, and affected by, Defendants' systemic policies and practices alleged herein.

68. **Adequacy:** Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff is represented by experienced and competent Class Counsel. Class Counsel have litigated numerous class actions. Class Counsel intend to prosecute this action vigorously for the benefit of everyone in the Class. Plaintiff and Class Counsel can fairly and adequately protect the interests of all of the Members of the Class.

69. **Superiority:** The class action is superior to other available methods for fairly and efficiently adjudicating this controversy because individual litigation of Class members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Without the class action vehicle, the Class would have no reasonable remedy and would continue to suffer losses. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. There is no foreseeable difficulty in managing this action as a class action and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

Failure to Pay all Regular and Overtime Wages (Off-the-Clock Work)

[Cal. Labor Code §§ 200, 204, 510, 1194 & 1198]

[On Behalf of Plaintiff and the Class against all Defendants]

70. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

1 71. Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser
2 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
3 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
4 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
5 fees and costs of suit.” Liquidated damages in an amount equal to the wages unlawfully unpaid and
6 interest thereon are provided for under Labor Code section 1194.2.

7 72. Labor Code section 1197 states “The minimum wage for employees fixed by the
8 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
9 and the payment of a lower wage than the minimum so fixed is unlawful.”

10 73. Labor Code section 1197.1 (a) states “Any employer or other person acting either
11 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
12 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
13 of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable
14 to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

15 74. As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally
16 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
17 the employee is underpaid. For each subsequent violation for the same specific offense, two hundred
18 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
19 underpaid regardless of whether the initial violation is intentionally committed.

20 75. Labor Code section 1198 states “The maximum hours of work and the standard
21 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
22 conditions of labor for employees. The employment of any employee for longer hours than those
23 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

24 76. Section (B) of the “Minimum Wages” provision of the applicable IWC Wage Order
25 states “Every employer shall pay to each employee, on the established payday for the period involved,
26 not less than the applicable minimum wage for all hours worked in the payroll period, whether the
27 remuneration is measured by time, piece, commission or otherwise.”
28

77. As set forth above, Defendants required Plaintiff and other Class members to work off-the-clock. Plaintiff and Class members regularly worked more than eight hours a day and more than 40 hours a week, however, Defendants did not compensate Plaintiff and the Class members for the time spent working for Defendants before and after they clocked out.

78. As such, Plaintiff and other Class members are owed wages for those unpaid hours.

79. Plaintiff and other Class members are entitled to recover from Defendants all of such unpaid regular pay, with pre-judgment interest, and reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 1194.

SECOND CAUSE OF ACTION

Failure to Provide Meal Breaks or Compensation in Lieu Thereof

[Cal. Labor Code §§ 226.7 & 512]

[On Behalf of Plaintiff and the Class against all Defendants]

80. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

81. Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* the applicable IWC Wage Order, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal period of at least thirty (30) minutes. Labor Code § 512; the applicable IWC Wage Order, item 11. If the employer fails to provide an employee with a legally compliant meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Labor Code § 226.7; the applicable IWC Wage Order, item 11.

82. Plaintiff contends that as a policy, practice, guideline and/or procedure, Defendants failed to provide meal breaks to their employees. Specifically, Defendants set up its system such that an employee was penalized for trying to take a full 30-minute meal period. Therefore, employees were prevented from taking meal breaks. As such, Plaintiff and other Class members were not relieved of duty and were not provided legally adequate meal breaks.

83. Because of the unlawful acts of Defendants, Plaintiff and the other members of the Class have been deprived of wages and other compensation, which is an amount resulting directly from the acts complained of. Plaintiff and the other Class members are entitled to recover one additional hour of pay at his or her regular rate of compensation for each workday that the meal period was not provided, plus interest thereon and costs of suit in an amount to proven at or following trial of this matter. Lab. Code §226.7(c) and the applicable IWC Wage Order, ¶11(B).

84. Plaintiff and the other members of the Class are also entitled to attorneys' fees and costs pursuant to Labor Code § 218.5.

THIRD CAUSE OF ACTION

Failure to Authorize and Permit Rest Breaks or Compensation in Lieu Thereof

[Cal. Labor Code § 226.7]

[On Behalf of Plaintiff and the Class against all Defendants]

85. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

86. The applicable IWC Wage Order, item 12 requires employers to authorize and permit off-duty rest periods during which an employee must be relieved of any and all work-related duties. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is not provided where an employer fails to relinquish control over how employees spend their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of pay at the employee's regular rate of pay for each workday in which a lawful rest period was not provided. *See also* the applicable IWC Wage Order.

87. As set forth above, Defendants consistently did not authorize and permit full 10-minute off-duty rest breaks.

88. Because of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of wages, which is an amount resulting directly from the acts complained of. Plaintiff and other members of the Class are entitled to recover one additional hour of pay at his or her regular rate of compensation for each workday that the rest period was not permitted, plus interest thereon and costs of suit in an amount to be proven at or following trial of this matter. *See*, the applicable IWC Wage Order, ¶12(B).

89. Plaintiff and the other members of the Class are also entitled to attorneys' fees and costs pursuant to Labor Code § 218.5.

FOURTH CAUSE OF ACTION

Failure to Reimburse Expenses

[Cal. Labor Code § 2802]

[On Behalf of Plaintiff and the Class against all Defendants]

90. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

91. Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

92. Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

93. Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

94. Defendants required Plaintiff and other Class members to purchase steel-toed boots as a condition of employment. Plaintiff and other Class members were not reimbursed for this necessary expense which was required for the benefit of their employer.

95. Defendants did not compensate Plaintiff and Class members for these costs incurred in the discharge of their duties and they are entitled to recover these expenses. Plaintiff and other Class members also seek recovery of interest, attorney's fees and costs to the extent allowed by law.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

[Cal. Labor Code § 226]

[On Behalf of Plaintiff and the Class against all Defendants]

96. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

97. Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

98. Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

99. In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for

1 each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and
2 Plaintiff is entitled to an award of costs and reasonable attorney's fees.

3 100. Section (B) of the "Records" provision of the applicable IWC Wage Order states that
4 "Every employer shall semimonthly or at the time of each payment of wages furnish each
5 employee, either as a detachable part of the check, draft, or voucher paying the employee's wages,
6 or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of
7 the period for which the employee is paid; (3) the name of the employee or the employee's social
8 security number; and (4) the name of the employer, provided all deductions made on written orders
9 of the employee may be aggregated and shown as one item."

10 101. Labor Code § 1174(d) provides that an employer must keep, at a central location in
11 the state or at the plants or establishments at which employees are employed, payroll records
12 showing the hours worked daily by and the wages paid to, employees employed at the respective
13 establishments. These records shall be kept on file for not less than three years. Labor Code §
14 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully
15 fails to maintain the records pursuant to Labor Code section 1 174(d).

16 102. Sections (7)(A)(4) and (5) of the "Records" provision of the applicable IWC Wage
17 Order provides that employers shall keep accurate information with respect to each employee,
18 including total wages paid each payroll period, total hours worked during the payroll period, and
19 applicable rates of pay, as well as time records showing when each employee begins and ends each
20 work period. The time records must also show meal periods, split shift intervals, and total daily
21 hours worked.

22 103. Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the
23 "Records" section of the applicable IWC Wage Order including but not limited to, accurately
24 recording applicable rates of pay.

25 104. Defendants also failed to provide accurate itemized wage statements as required by
26 Labor Code §226.

27 105. Due to Defendants not paying for all hours worked, not paying at legally required
28 rates and not paying meal and rest period premiums, Defendants do not record proper hours and

1 wages, and do not provide legally compliant wage statements accurately accounting for hours,
2 wages, deductions, etc.. Nor do the wage statements properly state the name and address of the legal
3 entity that is the employer.

4 106. Labor Code §§226(e) and (h) provide for the remedy for wage statement violations:

5 (e) An employee suffering injury as a result of a knowing and intentional failure by
6 an employer to comply with subdivision (a) is entitled to recover the greater of all
7 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
8 occurs and one hundred dollars (\$100) per employee for each violation in a
9 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
10 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

11 (h) An employee may also bring an action for injunctive relief to ensure compliance
12 with this section, and is entitled to an award of costs and reasonable attorney's fees.

13 107. By knowingly and intentionally failing to keep accurate time records and failing to
14 provide proper wage statements as required by Labor Code §§226, 1174(d), and the applicable IWC
15 Wage Order, ¶7, Defendant has injured Plaintiff and the other members of the Class and made it
16 difficult to calculate the unpaid wages owed, and losses and expenditures not indemnified by
17 Defendant (including wages, interest and penalties thereon) due Plaintiff and the Class.

18 108. Because of Defendants' unlawful acts, Plaintiff and the Class are entitled to bring this
19 action to recover damages, ensure compliance and recover costs and reasonable attorneys' fees.
20 Lab. Code §226(e)-(h).

21 **SIXTH CAUSE OF ACTION**

22 **Failure to Pay All Wages Due Upon Termination**

23 **[Cal. Labor Code §§ 201-203]**

24 **[On Behalf of Plaintiff and the Class against all Defendants]**

25 109. Plaintiff re-alleges and incorporates by reference each and every allegation contained
26 in the preceding and subsequent paragraphs as though fully set forth herein.

27 110. Labor Code § 201 states "If an employer discharges an employee, the wages earned
28 and unpaid at the time of discharge are due and payable immediately."

1 111. Labor Code § 202 states “If an employee not having a written contract for a definite
2 period quits his or her employment, his or her wages shall become due and payable not later than 72
3 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to
4 quit, in which case the employee is entitled to his or her wages at the time of quitting.”

5 112. Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay,
6 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
7 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
8 a penalty from the due date thereof at the same rate until paid or until an action therefore is
9 commenced; but the wages shall not continue for more than 30 days.”

10 113. Labor Code § 204(a) states in pertinent part “All wages... earned by any person in any
11 employment are due and payable twice during each calendar month, on days designated in advance
12 by the employer as the regular paydays.”

13 114. Defendants failed to pay Plaintiff and the other Class members all minimum, regular,
14 overtime, and meal and rest period wages due and owing during and upon termination of
15 employment. Defendants willfully failed to pay all wages when required by §§ 201 and 202 of the
16 Labor Code. Therefore, Defendants owe waiting time penalties to all affected employees including
17 Plaintiff.

18 115. Defendants failed to pay earned wages to Plaintiff and members of the Class upon
19 their termination and/or within 72 hours of the last day of their employment with Defendants. More
20 than 30 days have passed since Plaintiff and members of the Class have been terminated and/or quit
21 Defendants’ employ.

22 116. Because of Defendants’ willful conduct in not paying all wages due upon discharge
23 and/or resignation of employment, Plaintiff and the other members of the Class are entitled to 30-
24 days’ wages as a penalty under Labor Code §203, plus interest thereon. Pursuant to Labor Code
25 §218.5, Plaintiff and the other members of the Class are also entitled to attorneys’ fees and costs.

26 **SEVENTH CAUSE OF ACTION**

27 **Violation of the Unfair Competition Law**

28 **[Business & Professions Code § 17200 *et seq.*]**

[On Behalf of Plaintiff and the Class against all Defendants]

117. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

118. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair business practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

119. Defendants have conducted the following unlawful activities:

a) violations of Labor Code §§ 200, 204, 510, 1194 & 1198 by requiring Plaintiff and the Class to work off-the-clock and not paying them minimum and overtime wages for those hours worked;

b) violations of Labor Code §§512 and 226.7, and the applicable IWC Wage Order, ¶11, by failing to provide and/or precluding Plaintiff and the Class from taking a 30-minute restrictive-free meal period after working more than five hours per day and by failing to provide one hour of pay at Plaintiff's and the Class's regular rates of compensation for each work day that the meal periods were not provided;

c) violations of Labor Code § 2802 by failing to reimburse employees of costs incurred in the discharge of their employment duties.

d) violations of Labor Code §226.7 and the applicable Wage Order ¶12, , by failing to provide and/or precluding Plaintiff and the Class from taking rest periods and by failing to provide one hour of pay at Plaintiff's and the Class's regular rates of compensation for each work day that the rest periods were not provided;

e) violations of Labor Code §§226, 1174, 1174.5, and the applicable IWC Wage Order, ¶7, by failing to maintain and provide Plaintiff and the Class with accurate payroll and time records;

f) violations of Labor Code §204 by failing to timely pay all earned wages to Plaintiff and the Class;

g) violations of Labor Code §§201, 202, 203, 204 and 210 by failing to pay earned wages to Plaintiff and the Class upon their termination and/or within 72 hours of the last day of their employment with Defendant or upon regularly scheduled pay days required by California law;

1 h) violation of Labor Code §2100, *et seq.*, by enforcing and disciplining employees
2 under an illegal quota system. And by illegally terminating employees who could or did not
3 adequately perform under the illegal quota system;

4 i) And/or any other violations of applicable law and/or unfair and/or fraudulent
5 practices arising from the allegations stated herein.

6 120. Defendants' activities also constitute unfair practices in violation of Bus. & Prof.
7 Code §§17200, *et seq.*, because Defendants' practices violate the above noted laws, and/or violate
8 an established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous,
9 and substantially injurious to Plaintiff and the Class.

10 121. The identified violations of the Labor Code, Wage Order, Regulations, laws, and
11 public policy constitute business practices because they were done repeatedly over time and in a
12 systematic manner to the detriment of Plaintiff and the Class

13 122. Because of Defendants' violations of the Labor Code, Wage Order, Regulations, laws,
14 and public policy, Plaintiff and the Class have suffered injury-in-fact and have lost money or
15 property because of Defendants' practices. This injury-in-fact and loss of money or property
16 consists of the lost wages and other restitutionary remedies provided by the Labor Code,
17 Regulations, Wage Order, laws and public policy as detailed in this Complaint and other resulting
18 harms. Plaintiff and the Class are entitled to restitution, an injunction, declaratory, and other
19 equitable relief against such unlawful practices to prevent future damage for which there is no
20 adequate remedy at law. Specifically, there is no adequate remedy at law for unpaid wages which
21 occurred more than three years prior to the filing of this action, while the Unfair Competition Law
22 allows for restitution for four years.

23 123. As a direct and proximate result of the unfair business practices of Defendants,
24 Plaintiff and the Class are entitled to equitable and injunctive relief, including full restitution of all
25 wages which have been unlawfully lost as a result of the business acts and practices described
26 herein and enjoining Defendants to cease and desist from engaging in the practices described herein
27 for the maximum time permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

28 124. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and

1 alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, they will
2 continue to violate the noted laws.

3 125. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
4 pursuant to the private attorney general theory doctrine (Code of Civil Procedure §1021.5), and any
5 other applicable provision for attorney fees and costs, based upon the violation of the underlying
6 public policies.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Comply with California Quota Laws**

9 **[Cal. Labor Code § 2100, et seq.]**

10 **[On Behalf of Plaintiff and the Class against all Defendants]**

11 126. Plaintiff re-alleges and incorporates by reference each and every allegation contained
12 in the preceding and subsequent paragraphs as though fully set forth herein.

13 127. Labor Code § 2101 provides that each employer that employs 100 or more employees
14 at a single warehouse distribution center in California, or 1,000 employees at one or more
15 warehouse distribution centers in California, shall provide upon hire or within 30 days of the
16 effective date of this part, a written description of each quota to which the employee is subject,
17 including the quantified number of tasks to be performed or materials to be produced or handled,
18 within the defined time period, and any potential adverse employment action that could result from
19 failure to meet the quota.

20 128. Labor Code § 2102 provides that an employee shall not be required to meet a quota
21 that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable
22 travel time to and from bathroom facilities, or occupational health and safety laws in the Labor
23 Code or division standards. An employer shall not take adverse employment action against an
24 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
25 periods, or occupational health and safety laws in the Labor Code or division standards, or for
26 failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

27 129. Labor Code § 2103 provides:

28 (a) Any actions taken by an employee to comply with occupational health and safety

1 laws in the Labor Code or division standards shall be considered time on task and
2 productive time for purposes of any quota or monitoring system.

3 (b) Notwithstanding subdivision (a), consistent with existing law, meal and rest
4 breaks are not considered productive time unless the employee is required to remain
5 on call.

6 130. Defendants are subject to the above-mentioned Labor Code provisions because their
7 warehouses qualify as “warehouse distribution centers” under Labor Code § 2100(i) and they
8 qualify as an “employer” under Labor code § 2100(f) because they employ or exercise control over
9 the wages, hours, or working conditions of 100 or more employees at the Ontario, California
10 facility. Defendants also employ more than 1,000 employees at one or more warehouse distribution
11 centers in the state of California.

12 131. Defendants employ a quota as defined by Labor Code § 2100(h), because they have
13 and do use a system of timing employees for assignments and judging those employees’
14 performance against the set standards of how long each task is expected to take under the system.

15 132. Defendants failed to provide employees with a written description of applicable
16 quotas and any potential adverse employment action that could result from failure to meet the quota.
17 Defendants also required Plaintiff and other Class members to meet quotas that prevented
18 compliance with meal and rest periods and use of bathroom facilities, including reasonable travel
19 time to and from bathroom facilities. Similarly, the quota system prevented Plaintiff and other Class
20 members from taking breaks because it failed to account for or treat time traveling to and from
21 break areas as productive in the quota such that Plaintiff and other Class members were penalized
22 under the quota for taking breaks.

23 133. Defendants took adverse employment actions against Plaintiff and other Class
24 members, including termination, for failure to meet a quota that did not allow them to take meal and
25 rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom
26 facilities, and for failure to meet a quota that had never been disclosed to them as required by §
27 2101.

28 134. Labor Code § 2108 provides that “[a] current or former employee may bring an action

1 for injunctive relief to obtain compliance with Sections 2101 to 2104, inclusive, and may, upon
2 prevailing in the action, recover costs and reasonable attorney's fees in that action. In any action
3 involving a quota that prevented the compliance with regulations promulgated by the Occupational
4 Safety and Health Standards Board, the injunctive relief shall be limited to suspension of the quota
5 and any adverse action that resulted from its enforcement."

6 135. Plaintiff on behalf of herself and other Class members seeks injunctive relief for
7 Defendant's violation of the quota laws. Specifically, Plaintiff seeks to enjoin the use of Defendants'
8 quota system as violative of the law and enjoin Defendants to reverse any and all adverse actions
9 taken against Class members for failure to perform under the quota.

10 136. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
11 pursuant to Labor Code § 2108.

12 **NINTH CAUSE OF ACTION**

13 **Wrongful Termination**

14 **[Cal. Labor Code § 2100, et seq.]**

15 **[On Behalf of Plaintiff and the Subclass against all Defendants]**

16 137. Plaintiff re-alleges and incorporates by reference each and every allegation contained
17 in the preceding and subsequent paragraphs as though fully set forth herein.

18 138. Labor Code § 2101 provides that each employer that employs 100 or more employees
19 at a single warehouse distribution center in California, or 1,000 employees at one or more
20 warehouse distribution centers in California, shall provide upon hire or within 30 days of the
21 effective date of this part, a written description of each quota to which the employee is subject,
22 including the quantified number of tasks to be performed or materials to be produced or handled,
23 within the defined time period, and any potential adverse employment action that could result from
24 failure to meet the quota.

25 139. Labor Code § 2102 provides that an employee shall not be required to meet a quota
26 that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable
27 travel time to and from bathroom facilities, or occupational health and safety laws in the Labor
28 Code or division standards. An employer shall not take adverse employment action against an

1 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
2 periods, or occupational health and safety laws in the Labor Code or division standards, or for
3 failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

4 140. Labor Code § 2103 provides:

5 (a) Any actions taken by an employee to comply with occupational health and safety
6 laws in the Labor Code or division standards shall be considered time on task and
7 productive time for purposes of any quota or monitoring system.

8 (b) Notwithstanding subdivision (a), consistent with existing law, meal and rest
9 breaks are not considered productive time unless the employee is required to remain
10 on call.

11 141. Defendants are subject to the above-mentioned Labor Code provisions because their
12 warehouses qualify as “warehouse distribution centers” under Labor Code § 2100(i) and they
13 qualify as an “employer” under Labor code § 2100(f) because they employ or exercise control over
14 the wages, hours, or working conditions of 100 or more employees at the Ontario, California
15 facility. Defendants also employ more than 1,000 employees at one or more warehouse distribution
16 centers in the state of California.

17 142. Defendants employ a quota as defined by Labor Code § 2100(h), because they have
18 and do use a system of timing employees for assignments and judging those employees’
19 performance against the set standards of how long each task is expected to take under the system.

20 143. Defendants failed to provide employees with a written description of applicable
21 quotas and any potential adverse employment action that could result from failure to meet the quota.
22 Defendants also required Plaintiff and other Class members to meet quotas that prevented
23 compliance with meal and rest periods and use of bathroom facilities, including reasonable travel
24 time to and from bathroom facilities. Similarly, the quota system prevented Plaintiff and other Class
25 members from taking breaks because it failed to account for or treat time traveling to and from
26 break areas as productive in the quota such that Plaintiff and other Class members were penalized
27 under the quota for taking breaks.

28 144. Defendants took adverse employment actions against Plaintiff and other Class

1 members, including termination, for failure to meet a quota that did not allow them to take meal and
2 rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom
3 facilities, and for failure to meet a quota that had never been disclosed to them as required by §
4 2101.

5 145. Labor Code § 2108 provides that “[a] current or former employee may bring an action
6 for injunctive relief to obtain compliance with Sections 2101 to 2104, inclusive, and may, upon
7 prevailing in the action, recover costs and reasonable attorney’s fees in that action. In any action
8 involving a quota that prevented the compliance with regulations promulgated by the Occupational
9 Safety and Health Standards Board, the injunctive relief shall be limited to suspension of the quota
10 and any adverse action that resulted from its enforcement.”

11 146. Plaintiff worked for Defendants at their parts warehouse distribution center, in
12 Ontario, California during the Class Period.

13 147. Defendants terminated Plaintiff due to her performance under their illegal quota
14 system.

15 148. Upon information and belief, Defendants have and do discipline other Class
16 members up to and including terminating those employees for failure to perform under the quota
17 system.

18 149. Defendants’ discharge of Plaintiff caused Plaintiff harm. Plaintiff has suffered
19 damages, including but not limited to economic damages and humiliation, mental anguish and
20 emotional distress, in an amount according to proof at trial.

21 150. Upon information and belief, Defendants’ discipline up to and including termination
22 of other class member employees for failure to meet quota performance standards has caused those
23 employees harm.

24 151. Plaintiff and the Class are due compensation for the harm caused by Defendants’
25 illegal adverse actions, including, lost wages, emotional distress damages, and reinstatement, and
26 any other remedies the court finds adequate and appropriate.

27
28 / / /

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Against All Defendants)
[Cal. Labor Code §§ 2698-2699.5]

152. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

153. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code §2699.3, because Plaintiff was employed by Defendants and the alleged violations of the California Labor Code were committed against Plaintiff.

154. Pursuant to the PAGA, Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 203, 210, 248.5, 558, 1197.1 and the applicable IWC Wage Order, from Defendant for the violations set forth above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2101-2104, 2802, 6400, 6402 and 6404.

155. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the Labor Code, including:

- i. Failure to pay regular and overtime wages for all hours worked (Labor Code §§ 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198, and the applicable IWC Wage Order);
- ii. Failure to calculate a legally sufficient regular rate, and therefore:
 - a. Failure to pay overtime premium wages at legally sufficient rates (Labor Code § 510; *Alvarado v Dart Container*, (2018), 4 Cal.5th 542);
 - b. Failure to pay vacation pay at legally sufficient rates (Labor Code § 227.3);
 - c. Failure to pay sick leave and COVID-19 supplemental sick leave at legally sufficient rates (Labor Code §§ 246(l)(1)-(2) and 248.5); and

1 d. Failure to pay rest and meal break premium wages at legally sufficient rates
2 (Labor Code §§ 226.7, 512(a), 558, 1198; *Ferra v. Loews Hollywood Hotel*,
3 LLC, (2021) 11 Cal. 5th 858).

4 iii. Failure to pay sick leave and COVID-19 supplemental sick leave and to provide
5 notice of accrued sick leave available (Labor Code §§ 246(l)(1)-(2) and 248.5);

6 iv. Failure to provide meal breaks (Labor Code §§ 226.7, 512, 558 and the applicable
7 IWC Wage Order);

8 v. Failure to authorize and permit rest breaks (Labor Code §§ 226.7, 558 and the
9 applicable IWC Wage Order);

10 vi. Failure to reimburse business expenses (Labor Code § 2802);

11 vii. Failure to comply with California quota laws (Labor Code §§ 2101-2104);

12 viii. Failure to provide a safe and healthful workplace (Labor Code §§ 6400- 6404 and
13 California Code of Regulations, Title 8 § 3364 (b));

14 ix. Failure to pay wages in a timely fashion (Labor Code §§ 204, and 210);

15 x. Failure to provide accurate wage statements (Labor Code §§ 226(a), 226(e)(1),
16 226.3, 1174, 1174.5, and the applicable IWC Wage Order); and

17 xi. Failure to pay all wages due upon termination of the employment relationship
18 (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages”
19 Section of the applicable IWC Wage Order).

20 156. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant
21 to California Labor Code § 2699(g)(1).

22 157. Plaintiff has satisfied the requirements of Labor Code § 2699.3. On December 14,
23 2023, Plaintiff sent notice to the California Labor and Workforce Development Agency (LWDA)
24 and Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA)
25 notifying them of the specific violations and the facts and theories supporting those violations.
26 Plaintiff also provided Defendants notice of this “PAGA Letter” by certified mail. Sixty-five days
27 have elapsed since Plaintiff notified the LWDA and Cal/OSHA, and neither the LWDA nor
28 Cal/OSHA has provided notice that it intends to investigate the claims.

1 158. Further, for certain violations, Labor Code § 2699.3 provides that “the employer may
2 cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the
3 aggrieved employee or representative. The employer shall give written notice within that period of
4 time by certified mail to the aggrieved employee or representative and by online filing with the
5 agency if the alleged violation is cured, including a description of actions taken, and no civil action
6 pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day
7 period, the employee may commence a civil action pursuant to Section 2699.” Lab. Code, §
8 2699.3(c)(2)(A). Labor Code § 2699(d) states that “[f]or purposes of this part, ‘cure’ means that the
9 employer abates each violation alleged by any aggrieved employee, the employer is in compliance
10 with the underlying statutes as specified in the notice required by this part, and any aggrieved
11 employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall
12 only be considered cured upon a showing that the employer has provided a fully compliant,
13 itemized wage statement to each aggrieved employee for each pay period for the three-year period
14 prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section
15 2699.3.” Lab. Code, § 2699(d). Plaintiff has not received notice from Defendants that any of the
16 alleged violations were cured within the statutory period. Plaintiff has, therefore, exhausted her
17 administrative remedies as required by Labor Code §2699.3.

18 159. Attached as Exhibit 2 to this Complaint is Plaintiff’s PAGA Letter.

19 160. Here the PAGA period is 430 days prior to when the Class Complaint in this matter
20 was first filed. The Class Complaint in this matter was first filed on January 24, 2024, as such the
21 PAGA period in this matter begins on November 21st, 2022 and continues through the final
22 resolution of this matter.

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24 / / /

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27 / / /

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court certify this action as a Class Action under CCP § 382 and appoint Plaintiff as representative of the Class and her attorneys as Class Counsel;
2. For nominal, actual, exemplary and compensatory damages, including lost wages, according to proof at trial;
3. For restitution of all monies, wages, expenses, and costs due to Plaintiff and the Class;
4. For liquidated damages under Labor Code § 1194.2;
5. For reasonable attorneys' fees, costs and expenses pursuant to Labor Code §§ 218.5, 226, 1194, 2108, 2802, and Code of Civil Procedure § 1021.5;
6. For pre-judgment and post-judgment interest, to the extent allowable by law, including but not limited to pre-judgement interest authorized under Labor Code § 218.6;
7. For all applicable statutory penalties recoverable under Labor Code §§203, 210, 226, 558, and as otherwise authorized by statute or law;
8. For appropriate injunctive relief, including but not limited to an injunction restraining Defendants from continuing to engage in unlawful and unfair business practices in violation of Bus. & Prof. Code §17200, et seq., all appropriate injunctions under Labor Code § 2100 et. seq. preventing Defendants from enforcing illegal quotas and policies and practices related to illegal quotas;
9. For civil penalties pursuant to the PAGA (Labor Code 2698 et seq.);
10. For costs of suit and attorneys' fees as permitted by law, including those available pursuant to Labor Code section 2699(g);
11. For any other appropriate declaratory relief;
12. For all such other and further relief as the Court deems proper and just under all the circumstances.

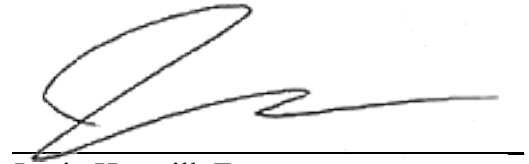
DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all claims so triable.

DATED: May 17, 2024

BEN TRAVIS LAW, APC

HEWGILL, COBB & LOCKARD, APC

A handwritten signature in black ink, appearing to read "Justin Hewgill", is written over a horizontal line.

Justin Hewgill, Esq.
Ben Travis, Esq.
Attorneys for Plaintiffs