

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444
Fax: (951) 320-1445

Kirk D. Hanson, State Bar No. 167920
LAW OFFICES OF KIRK D. HANSON
2790 Truxtun Rd., Suite 140
San Diego, California 92106
(619) 523-1992 Tel.
(619) 523-9002 Fax

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

KATIE MILLER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CONTERA CONSTRUCTION
CORPORATION, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2403479
*[Assigned to Hon. Harold W. Hopp, Dept 1,
for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

1 Plaintiff Katie Miller (“Plaintiff”) on behalf of herself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

12 2. Plaintiff was employed by Defendants and alleges on information and belief that
13 the Represented Employees were subjected to the same policies, working conditions, and
14 corresponding wage and hour violations to which Plaintiff was subjected during employment.

15 3. Plaintiff and the Represented Employees were not provided all minimum, regular,
16 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
17 worked. Because this time was spent under Defendants’ control without compensation, this
18 violates California law and led to minimum and overtime wage violations. See *Troester v.*
19 *Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to
20 require employees to routinely work for minutes off the clock without compensation”).

21 4. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
22 Represented Employees. For example, Defendants paid Plaintiff and the Represented
23 Employees on an hourly basis but also paid additional earned compensation (such as health and
24 welfare payments, paid per hour worked). However, during workweeks where the Represented
25 Employees worked overtime hours and earned additional nondiscretionary compensation,
26 Defendants failed to properly include that compensation in the calculations for the regular rate of
27 pay – violating the well-established rule that overtime must always be paid at time and one-half
28 the regular rate of pay. Additionally, Plaintiff and the Represented Employees would often work

1 at two or more base rates of pay in the same workweek. Yet, when the Represented Employees
2 worked overtime and worked at two or more base rates of pay in the same workweek,
3 Defendants illegally paid overtime at the “rate-in-effect” method rather than using the correct
4 “weighted average” method. See DLSE Manual § 49.2.6.2 (when an employee performs
5 prevailing and non prevailing jobs during the same workweek, the company is required to pay
6 overtime at the “weighted average” of the blended rate, averaging the normal base hourly rate
7 and prevailing wage rate).

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

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

23 7. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
24 Employees to incur necessary business-related expenses and costs without reimbursement. For
25 example, Plaintiff was required to acquire and maintain a smart phone and monthly data plan to
26 clock in and out on Apps, track loads, and communicate with the Company via phone, text
27 message, and e-mail, without reimbursement.

1 8. Plaintiff also alleges that he and the Represented Employees were not paid all
2 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
3 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
4 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
5 Employees at the time their employment ended with Defendants, including, but not limited to
6 minimum, regular, and overtime wages, sick pay wages, wage premiums, among others.

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

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

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

19 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
20 monetary relief against Defendants and each of them, on behalf of herself and the Represented
21 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
22 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
23 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
24 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
25 name additional representatives throughout the State of California.

26 **II. JURISDICTION**

27 13. This Court has jurisdiction over the claims for relief of Plaintiff and the
28 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

1 **III. VENUE**

2 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
4 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
5 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
6 Riverside County.

7 **IV. PARTIES**

8 **Plaintiff**

9 15. Plaintiff and Class Representative Katie Miller was employed by Defendants and
10 performed work for Defendants in Riverside County.

11 **Defendants**

12 16. Plaintiff is informed and believes and thereon alleges that Defendant Contera
13 Construction Corporation is a California corporation authorized to and doing business in
14 Riverside County, California. Plaintiff is also informed and believes that Defendant Contera
15 Construction Corporation is and/or was the legal employer of Plaintiff and the Represented
16 Employees during the applicable statutory periods.

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

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

1 unity of interest and ownership between each Defendant exists such that all Defendants acted as
2 a single employer of Plaintiff and other Represented Employees.

3 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
4 Defendants, and each of them, are an integrated enterprise and should be treated as a single
5 employer because these entities share an interrelation of operations, with common human
6 resources and personnel policies and shared common offices and facilities. Additionally,
7 Defendants also have a shared website, common management, a centralized control of labor
8 operations, and common ownership or financial control.

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

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

26 **V. CLASS ACTION ALLEGATIONS**

27 22. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 (hereinafter referred to as the "Complaint") as if fully alleged herein.

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

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

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

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

9 26. Plaintiff also seeks to represent the following subclasses:

10 **Meal Break Subclass**

11 All Represented Employees who worked a shift in excess of
12 5 hours during the Relevant Time Period.

13 **Rest Break Subclass**

14 All Represented Employees who worked a shift of at least
15 3.5 hours during the Relevant Time Period.

16 **Unreimbursed Expense Subclass**

17 All Represented Employees who were required to incur
18 expenses to discharge their duties for Defendants without
19 reimbursement during the Relevant Time Period.

20 **Waiting Time Penalties Subclass**

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

25 **Wage Statement Penalties Subclass**

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

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

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

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

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

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

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

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

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

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

break was not provided;

v. Whether Defendants violated the Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business expenses incurred discharging their duties or in obedience to the directions of their employer;

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

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

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

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

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

33. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

///

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

12 *Plaintiff and the Represented Employees Against All Defendants*

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

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

18 37. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages due to Defendants' failure to accurately record and compensate for all hours
20 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
21 required to perform off-the-clock work that Defendants either knew or should have known they
22 were performing.

23 38. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
24 Represented Employees for all hours worked.

25 39. Consequently, Defendants violated California Labor Code laws and minimum
26 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
27 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).
28

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

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

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

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

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

45. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Represented Employees Against All Defendants

46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

11 50. Furthermore, Defendants paid Plaintiff and the Represented Employees on an
12 hourly basis but also paid additional earned compensation (such as health and welfare payments,
13 paid per hour worked). However, during workweeks where the Represented Employees worked
14 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
15 properly include that compensation in the calculations for the regular rate of pay – violating the
16 well-established rule that overtime must always be paid at time and one-half the regular rate of
17 pay.

18 51. Additionally, Plaintiff and the Represented Employees would often work at two
19 or more base rates of pay in the same workweek. Yet, when the Represented Employees worked
20 overtime and worked at two or more base rates of pay in the same workweek, Defendants
21 illegally paid overtime at the "rate-in-effect" method rather than using the correct "weighted
22 average" method. See DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non
23 prevailing jobs during the same workweek, the company is required to pay overtime at the
24 "weighted average" of the blended rate, averaging the normal base hourly rate and prevailing
25 wage rate).

26 52. As a result of these policies and practices, Defendants failed to pay Plaintiff and
27 the Represented Employees for all overtime hours worked.
28

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

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

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

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

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

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

20 59. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
21 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
22 Defendants in an amount to be proven at trial.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

27 60. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

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

4 62. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

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

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

27 67. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
28 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated

1 meal or rest periods, thereby receiving an economic benefit.

2 68. On information and belief, Plaintiff and the Meal Break Subclass did not
3 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
4 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
5 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
6 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
7 to take meal periods in accordance with California law.

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

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

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

27 74. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
28 permit all employees to take rest periods, which insofar as practicable shall be in the middle of

1 each work period. Employees shall receive a 10-minute rest period every four hours or major
2 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
3 hours worked, for which there shall be no deduction from wages.

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

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

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

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

22 79. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
23 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
24 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
25 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
26 employee's regular rate of compensation for each workday that a paid rest break was not
27 lawfully provided in an amount to be proven at time of trial.
28

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

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Labor Code § 2802)

7 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

8 81. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 82. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing
12 reimbursement of business expenses.

13 83. Labor Code § 2802(a) requires that the employer indemnify its employees for
14 expenses and losses incurred while discharging their duties or in obedience to the directions of
15 their employer.

16 84. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
18 expenses and costs without reimbursement, including acquiring and maintaining a smart phone
19 and monthly data plan to clock in and out via Apps, track loads, and communicate with the
20 Company via phone, text message, and e-mail.

21 85. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
23 direct consequence of employment with Defendants and/or under the direction of Defendants.

24 86. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
25 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
26 Defendants, thereby receiving an economic benefit.

27 87. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
28 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to

1 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
2 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
3 to be proved at time of trial.

4 88. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
5 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
6 civil actions, and said interest will accrue from the date on which the employee incurred the
7 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
8 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
9 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

10 89. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
11 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
12 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
13 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
14 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
15 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
16 attorney's fees will be in an amount to be proved at the time of trial.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

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

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

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

26 92. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.
28

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

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

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

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

14 97. Furthermore, Defendants failed to pay all wages due and owing to the Waiting
15 Time Subclass because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
16 provides that paid sick time for non-exempt employees must be “calculated in the same manner
17 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
18 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
19 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
20 wages, not including overtime premium pay, by the employee’s total hours worked in the full
21 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
22 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
23 unpaid sick pay and violations of Labor Code §§ 201 – 203.

24 98. Plaintiff alleges that, at all times material to this action, Defendants had a planned
25 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
26 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
27 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
28 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown

1 according to proof at trial and within the jurisdiction of this Court.

2 **SEVENTH CAUSE OF ACTION**

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

4 (Labor Code § 226)

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

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

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

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

17 102. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
19 total hours worked (for example, the wage statements failed to accurately reflect the
20 compensable hours worked); failure to accurately state gross wages earned; failure to accurately
21 state all deductions; failure to accurately state net wages earned; failure to state the applicable
22 hourly rates (including the accurate overtime rate of pay); and failure to accurately state the
23 corresponding number of hours worked at each hourly rate.

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

27 104. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
28 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a

1 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
2 requirements of Labor Code § 226(a).

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

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

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

25 108. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
26 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
27 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
28 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were

1 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
2 applicable penalty is all in an amount to be shown according to proof at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **UNFAIR AND UNLAWFUL COMPETITION**

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

6 *Plaintiff and the Represented Employees against All Defendants*

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

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

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

15 112. As alleged herein, Defendants engaged in conduct that violated California's wage
16 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
17 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to
18 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

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

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

1 116. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
4 of Civil Procedure § 1021.5.

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

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

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

24 120. Plaintiff, individually, and on behalf of the Represented Employees, is further
25 entitled to and do seek a declaration that the above described business practices are unfair,
26 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
27 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
28 the future.

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

7 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
8 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

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

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

20 124. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
21 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations.

24 125. Therefore, as more than sixty-five (65) days have passed since that date, Plaintiff
25 has fully satisfied the administrative prerequisites to suit under the PAGA. Plaintiff seeks to
26 recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as
27 attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative
28 action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court*

(2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does she, seek class certification of the
PAGA claims under Code of Civil Procedure § 382.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

126. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
alleged herein.

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

128. Plaintiff and the Aggrieved Employees were not provided proper minimum and
regular wages due to Defendants' failure to accurately record and compensate for all hours
worked.

129. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
Aggrieved Employees for all hours worked.

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

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

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

///

///

///

1 **TENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

7 134. Plaintiff and the Aggrieved Employees were employees of Defendants who did
8 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

15 136. At all relevant times, Plaintiff and the Aggrieved Employees were required by
16 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
17 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
18 Aggrieved Employees did not receive proper overtime compensation.

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

26 138. Additionally, Plaintiff and the Aggrieved Employees would often work at two or
27 more base rates of pay in the same workweek. Yet, when the Aggrieved Employees worked
28 overtime and worked at two or more base rates of pay in the same workweek, Defendants

1 illegally paid overtime at the “rate-in-effect” method rather than using the correct “weighted
2 average” method. See DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non
3 prevailing jobs during the same workweek, the company is required to pay overtime at the
4 “weighted average” of the blended rate, averaging the normal base hourly rate and prevailing
5 wage rate)

6 139. As a result of these policies and practices, Defendants failed to pay Plaintiff and
7 the Aggrieved Employees for all overtime hours worked.

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

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

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

18 **ELEVENTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

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

21 *Plaintiff and the Aggrieved Employees against All Defendants*

22 143. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
23 herein.

24 144. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing mandatory meal periods.

26 145. Labor Code § 226.7 requires employers, including Defendants, to provide
27 employees with meal periods as mandated by the Industrial Welfare Commission.
28

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

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

11 148. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the
12 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
14 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
15 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
16 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
17 meal periods for shifts in excess of 10 hours.

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

22 150. On information and belief, Plaintiff and the Aggrieved Employees did not
23 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
24 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
25 voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful
26 adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved Employees to take
27 meal periods in accordance with California law.
28

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

4 **TWELFTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 152. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

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

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

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

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

22 157. At all relevant times, Defendants also failed to provide Plaintiff and the
23 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
25 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
26 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
27 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
28

1 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
2 mandated third or fourth rest breaks.

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

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

10 **THIRTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 (Labor Code § 2802)

13 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

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

16 161. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing reimbursement of
18 business expenses.

19 162. Labor Code § 2802(a) requires that the employer indemnify its employees for
20 expenses and losses incurred while discharging their duties or in obedience to the directions of
21 their employer.

22 163. At all relevant times herein mentioned, as a condition of employment, Defendants
23 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
24 costs without reimbursement, including acquiring and maintaining a smart phone and monthly
25 data plan to clock in and out via Apps, track loads, and communicate with the Company via
26 phone, text message, and e-mail.
27
28

1 164. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
2 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
3 consequence of employment with Defendants and/or under the direction of Defendants.

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

7 **FOURTEENTH CAUSE OF ACTION**

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

9 (Labor Code § 204)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

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

13 167. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
14 of Defendants who did not receive proper protections and benefits of the laws regarding the
15 timing of payment of wages each period.

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

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

24 170. At all relevant times herein, Defendants did not provide Plaintiff and the
25 Aggrieved Employees with all wages due and owing each period within the time required by
26 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
27 Employees with all wages due and owing each pay period, including, but not limited to,
28

1 minimum, regular, and overtime wages, sick pay, as well as meal and rest period premiums,
2 within the time specified by Labor Code § 204.

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

6 **FIFTEENTH CAUSE OF ACTION**

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

8 (Labor Code §§ 201 – 203 and 256)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

15 174. Labor Code § 201 requires that the employer immediately pay any wages, without
16 abatement or reduction, to any employee who is discharged.

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

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

23 177. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
24 Employees with all wages due and owing upon separation of employment, including, but not
25 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
26 within the time specified by Labor Code §§ 201 – 203.

27 178. Furthermore, Defendants failed to pay all wages due and owing to the Aggrieved
28 Employees because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)

1 provides that paid sick time for non-exempt employees must be “calculated in the same manner
2 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
3 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
4 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
5 wages, not including overtime premium pay, by the employee’s total hours worked in the full
6 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
7 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
8 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

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

15 **SIXTEENTH CAUSE OF ACTION**

16 **PAGA ASSESSMENT FOR**

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

18 (Labor Code § 226)

19 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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.

184. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately reflect the compensable hours worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate.

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

186. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

187. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

V. PRAYER FOR RELIEF

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

1. That the First through Eighth Causes of Action be certified as a class action;
2. That Plaintiff be appointed as Class Representative;
3. That counsel for Plaintiff be appointed Class Counsel;

1 4. For all applicable statutory penalties recoverable under the First through Eighth
2 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
3 Orders of the Industrial Welfare Commission;

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

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

8 7. As to the Ninth through Sixteenth Causes of Action, the assessment of all
9 applicable and available remedies under the PAGA;

10 8. For reasonable attorneys' fees and costs as permitted under the PAGA;

11 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
12 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
13 and 1199, among other sections inadvertently omitted;

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

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

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

19 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: September 12, 2024

LAUBY, MANKIN & LAUBY LLP

24
25 BY: 
26 Brian J. Mankin, Esq.
27 Kristina Bui Carlson, Esq.
28 Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On September 18, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 18, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

SERVICE LIST

Nathan R. Klein, Esq.
Myla Razel P. Sarmiento, Esq.
Emma F. Plotnik, Esq.
TYLER LAW, LLP
25026 Las Brisas Road
Murrieta, CA 92562
951-600-2733
951-600-4996-fax
nklein@tylerlawllp.com
msarmiento@tylerlawllp.com
eplochnik@tylerlawllp.com
Attorneys for CONTERA CONSTRUCTION CORPORATION