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Attorneys for PENNY A. SCOTT, on behalf of herself
and other aggrieved and similarly-situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PENNY A. SCOTT, on behalf of herself and
other aggrieved and similarly-situated
employees,

Plaintiff,

v.

BLACKSTONE CONSULTING, INC., a
California Corporation; and DOES 1
Through 10, inclusive,

Defendants.

CASE NO. 37-2021-00022564-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION AND REPRESENTATIVE
ACTION PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

- 1. FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES**
- 2. FAILURE TO PROVIDE MEAL
PERIODS OR PAY IN LIEU
THEREOF**
- 3. FAILURE TO PROVIDE REST
PERIODS OR PAY IN LIEU
THEREOF**
- 4. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. FAILURE TO PAY VACATION
WAGES**
- 6. FAILURE TO PAY WAGES TIMELY
TO SEPARATED EMPLOYEES**
- 7. FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 8. VIOLATIONS OF THE UNFAIR
COMPETITION LAW**
- 9. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES**

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- 10. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**
- 11. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN LIEU THEREOF**
- 12. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
- 13. PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
- 14. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE VACATION WAGES**
- 15. PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT AND UPON SEPARATION FROM EMPLOYMENT**
- 16. PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

DEMAND FOR JURY TRIAL

I.

INTRODUCTION

1. Plaintiff PENNY A. SCOTT (“Plaintiff”) brings this proposed class action and PAGA Representative Action against her former employer BLACKSTONE CONSULTING, INC., a California Corporation, and DOES 1-10 (collectively, “Defendants”) for multiple wage and hour violations under the California Labor Code. Specifically, during all or a significant part of the applicable limitations period, or proposed “Class Period” (which is defined as any time from four years prior to the commencement of this action until the commencement of trial in the matter), Plaintiff alleges Defendants failed to: pay her and all other hourly, non-exempt employees all minimum, regular, and overtime wages for all time worked or spent under the Defendants’ control due to Defendants’ unlawful time rounding policy; provide all lawful meal and rest periods or pay an hour’s worth of pay in lieu thereof; provide accurate, itemized wage statements; maintain accurate records; pay vacation wages owed upon separation; reimburse business expenses; and timely pay all wages due during employment and upon separation from employment.

2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the state of California, and aggrieved current and former employees. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties, and reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a representative of the State of California. Plaintiff mailed written notice of the specific provisions of the code that Defendants violated, including the facts and theories to support the alleged violations, to the California Labor and Workforce Development Agency (“LWDA”) and to BLACKSTONE CONSULTING, INC. on May 11, 2021. Defendants did not provide notice of cure and the LWDA did not provide notice of investigation in the 65 days of the May 11, 2021 mailing of the PAGA notice.

3. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all current and former aggrieved employees of Defendants who suffered one or more of the alleged violations (“aggrieved employees”) as described herein during the applicable limitations period

1 for the time period covered by the PAGA. The applicable limitations period is referred herein
2 as “the PAGA Period.”

3 **II.**

4 **JURISDICTION & VENUE**

5 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code
6 of Civil Procedure section 395. Defendants conduct business in San Diego County, California
7 and each Defendant is within the jurisdiction of this Court for service of process purposes. The
8 unlawful acts alleged have a direct effect on Plaintiff and other aggrieved and similarly-situated
9 employees within the State of California and San Diego County. Defendants employ numerous
10 employees in San Diego County and in California generally. There is no federal question at
11 issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on
12 California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of
13 Civil Procedure.

14 5. Plaintiff alleges, on information and belief, that no federal question is raised and
15 that the Class Action Fairness Act (“CAFA”), 28 U.S.C. section 1332(d), does not apply, or in
16 the alternative, that exceptions for local case or controversy under the CAFA do apply and
17 prohibit removal of this action to federal court. Plaintiff is also informed and believes that
18 based on her rate of pay, her individual claims do not meet the necessary amount in controversy
19 to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the
20 CAFA.

21 6. Plaintiff is also informed and believes that her individual PAGA claims do not
22 arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28
23 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under
24 the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA
25 civil penalty actions are not subject to federal jurisdiction.

26 **III.**

27 **PARTIES**

28 7. Plaintiff PENNY A. SCOTT is a resident of San Diego, California. Plaintiff is a

1 former employee of Defendants. Plaintiff was employed by Defendants in the non-exempt,
2 hourly-paid position of Security Officer at the Kaiser Permanente Zion Medical Center in San
3 Diego County from approximately December 15, 2017 through March 8, 2021.

4 8. Plaintiff alleges that she and all other non-exempt hourly employees in the State
5 of California worked under Defendants' policies and as a result, suffered the same violations
6 alleged herein.

7 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 BLACKSTONE CONSULTING, INC. is a California Corporation, operating out of Los
9 Angeles, California, that hires, manages, and provides service employees to hospitals, schools,
10 universities, and industrial sites.

11 10. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
12 employers of Plaintiff, and/or persons acting on behalf of Plaintiff's employer, who violated, or
13 caused to be violated, any provision regulating minimum wages or hours and days of work in
14 the applicable order of the Industrial Welfare Commission, as well as California Labor Code
15 sections 201-204, 226, 226.7, 227.3, 510, 512, 1194, 1197, 1198, 2802, and 2804.

16 11. At all times relevant BLACKSTONE CONSULTING, INC. did, and does,
17 transact and conduct business in the state of California and within the jurisdiction of the Court.
18 At all times relevant, BLACKSTONE CONSULTING, INC. was Plaintiff's employer for
19 purposes of the California wage and hour laws at issue in this action.

20 12. Plaintiff is unaware of the true names, capacities, relationships, and extent of
21 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
22 and believes, and based thereon alleges, that DOE Defendants are legally responsible for the
23 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
24 amend this complaint when their true names and capabilities are ascertained.

25 13. Plaintiff is informed and believes and, based thereon alleges, that each
26 Defendants, directly or indirectly, or through agents or other persons, employed Plaintiff and
27 other aggrieved and similarly-situated employees, and exercised control over their wages,
28 hours, and working conditions. Plaintiff is informed and believes, and based thereon alleges,

1 that each Defendant acted in all respects pertinent to this action as the agent of the other
2 Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
3 and the acts of each Defendant are legally attributable to the other Defendants.

4 **IV.**

5 **GENERAL ALLEGATIONS**

6 14. At all times during the Class and PAGA Periods, Plaintiff and aggrieved and
7 similarly-situated current and former non-exempt, hourly employees were employed by
8 Defendants and each of them, including DOE Defendants, within the state of California.

9 15. During the Class and PAGA Periods, Defendants maintained common policies
10 and practices applicable to Defendants' employees, including Plaintiff, which resulted in
11 Defendants' failure to: pay required minimum, regular, and overtime wages for all time worked
12 or spent under the Defendants' control due to Defendants' unlawful time rounding policy;
13 provide all lawful meal and rest periods or pay an hour's worth of pay in lieu thereof; provide
14 accurate, itemized wage statements; maintain accurate records; pay vacation wages owed upon
15 separation; reimburse business expenses; and timely pay all wages due during employment and
16 upon separation from employment.

17 16. The California Labor Code and applicable IWC Wage Order and portions of the
18 California Code of Regulations provide (1) that all persons employed in the State of California
19 shall be presumed to be an hourly or non-exempt employee; (2) that all "hours worked" and
20 subject to the control of the employer, whether exercised or not, are to be paid at least the
21 minimum wage as determined by the State of California, and for overtime wages at 1.5 times
22 the regular rate of pay when "hours worked" exceed 8 hours in a single day or shift, or 40 hours
23 in a 168-total hour work or 2.0 times the regular rate of pay when "hours worked" exceed 12
24 hours in a single day or shift, or 8 hours on the seventh day of work in a workweek. Labor
25 Code sections 1194, *et seq.* provide that notwithstanding any agreement to work for a lesser
26 wage, an employee receiving less than the legal overtime or minimum wage compensation is
27 entitled to recover in a civil action the unpaid balance of their owed compensation, including
28 interest thereon, reasonable attorneys' fees, and costs of suit.

1 17. Plaintiff and all aggrieved and similarly-situated employees are covered by one
2 or more IWC Wage Order (“Wage Orders”), Labor Code section 510, and/or other applicable
3 wage orders, regulations, and statutes, and each aggrieved and similarly-situated employee was
4 not subject to an exemption for executive, administrative, or professional employees, or any
5 other exemption. Therefore, Defendants are and were obligated to pay Plaintiff and aggrieved
6 and similarly-situated employees lawful minimum and overtime compensation, as well as to
7 provide statutory meal and rest periods.

8 18. Plaintiff and each aggrieved and similarly-situated employee worked in excess
9 of the maximum regular rate hours set by the IWC in the above Wage Orders, regulations, or
10 statutes, and are therefore entitled to appropriate overtime compensation at 1.5 times their
11 regular rates of pay, and when applicable, 2.0 times their regular rates of pay as set forth by the
12 above Wage Orders, regulations, and/or statutes.

13 19. During the Class and PAGA Periods, Defendants maintained a common policy
14 and practice of failing to pay Plaintiff and other aggrieved and similarly-situated employees for
15 all hours worked. Specifically, Plaintiff and other aggrieved and similarly-situated employees
16 were subjected to a uniform policy and practice of unlawful time rounding.

17 20. That is, Defendants did not pay Plaintiff and other aggrieved and similarly-
18 situated employees precisely for all hours worked. Instead, Defendants rounded employees’
19 hours based on scheduled hours of work and/or to the nearest quarter hour. Over time, these
20 rounding practices unlawfully favored Defendants and resulted in time lost to employees,
21 including Plaintiff. This rounding policy was not neutral on its face or in application, and
22 resulted in a cumulative loss of time to Plaintiff and other aggrieved and similarly-situated
23 employees.

24 21. Defendants had the ability to pay for the precise hours worked, but opted instead
25 to utilize the rounding policy with no apparent benefit other than to benefit Defendants and
26 deprive employees of payment for all hours worked. Strict rules regarding punctuality also
27 favored Defendants. For instance, Plaintiff and other aggrieved and similarly-situated
28 employees were told they must clock in exactly at the start of their shift, or they would be

1 considered late. To avoid being late, Plaintiff and other aggrieved and similarly-situated
2 employees sometimes clocked in a few minutes early. As a result, Plaintiff and other employees
3 were not paid all minimum and regular wages for all hours worked. When the employees
4 worked overtime, the rounding policy also resulted in the failure to pay all overtime wages for
5 all overtime hours worked. As a result, Plaintiff and other employees were not paid all
6 minimum, regular, and overtime wages for all hours worked.

7 22. During the Class and PAGA Periods, Plaintiff and other aggrieved and
8 similarly-situated employees were also not paid all applicable minimum, regular, and overtime
9 wages for the time spent working during purported meal periods.

10 23. During the Class and PAGA Periods, Defendants subjected Plaintiff and all
11 aggrieved and similarly-situated employees to policies and practices which failed to provide
12 compliant meal and rest periods.

13 24. Plaintiff and other aggrieved and similarly-situated employees were not
14 provided an opportunity for each shift to take a timely, thirty-minute, uninterrupted, off-duty
15 meal period before the end of the fifth hour of work. Plaintiff and other aggrieved and
16 similarly-situated employees had to be relieved by a dispatcher or supervisor in order to take
17 their meal periods. Because of this, Plaintiff and other aggrieved and similarly-situated
18 employees often could not take their meal periods before the end of the fifth hour of work.
19 When meal periods were provided, they were often late, short, or interrupted. Plaintiff and
20 other aggrieved and similarly-situated employees were required to keep their radios on during
21 meal periods, and they were often interrupted by dispatch on their radios during these meal
22 periods.

23 25. Further, Plaintiff and other aggrieved and similarly-situated employees were not
24 provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on
25 shifts lasting more than ten hours before the end of the tenth hour of work.

26 26. Plaintiff and other aggrieved and similarly-situated employees were also not
27 authorized or permitted to take all off-duty rest periods of at least 10 minutes to which they
28 were entitled.

1 27. During the Class and PAGA Periods, Defendants never paid one hour of wages
2 at a regular rate of pay for each shift in which a compliant rest or meal period was not provided,
3 as required by Labor Code section 226.7 and Sections 11 and 12 of the applicable Wage Order.

4 28. During the Class and PAGA Periods, Defendants failed to provide accurate
5 wage statements to Plaintiff and other aggrieved and similarly-situated employees. The
6 paystubs provided to Plaintiff and other aggrieved and similarly-situated employees did not
7 contain all accurate information as required by Labor Code section 226(a). For instance,
8 because Defendants failed to pay all minimum, regular, and overtime wages, all meal and rest
9 period premium wages, and all vacation wages, Defendants failed to accurately set forth the
10 total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates
11 in effect and the total number of hours worked at each rate.

12 29. During the Class and PAGA Periods, Defendants failed to record (and maintain
13 records) reflecting when the employees began and ended each work period and meal period.
14 Plaintiff and other aggrieved and similarly-situated employees were told not to clock in and out
15 for lunch, but to write down their meal period start and end times on a piece of paper, daily. On
16 information and belief, these handwritten records were not properly maintained by Defendants.
17 Defendants further failed to accurately record the total hours worked, due to its rounding
18 policy.

19 30. During the Class and PAGA Periods, Defendants failed to pay all vacation
20 wages owed to Plaintiff and other aggrieved and similarly-situated employees. Defendants did
21 not pay all vacation wages earned and vested upon termination of employment. For instance,
22 Plaintiff's vacation wages were paid on February 25, 2021. Her last day of employment was on
23 or around March 4, 2021. However, Defendant did not pay any vacation wages for the time
24 accrued between February 25, 2021 and March 4, 2021. Thus, Defendants failed to pay
25 vacation wages that were accrued and earned between the time that she received her vacation
26 wages and the final day of her employment. On information and belief, Defendant maintained a
27 practice and policy of failing to pay all vacation wages to all other aggrieved and similarly-
28 situated employees. During the Class and PAGA Periods, because Defendants failed to pay all

1 earned minimum, regular, and overtime wages to Plaintiff and aggrieved and similarly-situated
2 employees, Defendants failed to timely pay wages due during employment.

3 31. During the Class and PAGA Periods, Defendants maintained a regular practice
4 of failing to pay separated employees all wages owed within the time requirements of Labor
5 Code sections 201- 202 because it did not pay all wages earned, including but not limited to all
6 meal and rest period premium wages; all vacation wages, and all minimum, regular and
7 overtime wages due to rounding as set forth herein.

8 32. Defendants also did not pay a day's wages for every day final pay was not paid
9 through the date final wages were paid, as required by Labor Code section 203. Plaintiff is
10 informed and believes that Defendants have no policy or practice to comply with Labor Code
11 sections 201, 202, and 203 as to all separated employees in California by timely paying final
12 wages and paying waiting time penalty wages when failing to timely pay final wages.

13 33. During the Class and PAGA Periods, Defendants maintained a regular practice
14 of failing to reimburse employees for their business expenses. For instance, Defendants
15 required Plaintiff and other aggrieved and similarly-situated employees to download the
16 Valliant application on their personal cell phones in order to clock in and out from work so that
17 Defendants could keep track of these employees' hours worked. Defendants did not reimburse
18 Plaintiff and other aggrieved and similarly-situated employees for this business-related cell
19 phone use and the accompanying expenses.

20 34. During the Class and PAGA Periods, Plaintiff further alleges, based on personal
21 experience and observation, that the violations of the Labor Code described herein were
22 suffered by other current and former non-exempt, hourly employees of Defendants.

23 **V.**

24 **CLASS ACTION ALLEGATIONS**

25 35. Plaintiff brings this class action on behalf of herself and all others similarly-
26 situated pursuant to Code of Civil Procedure section 382. The members of the Class are defined
27 as follows:

28 ///

All individuals employed by Defendants in the State of California as hourly, non-exempt employees at any time four years prior to the filing of this complaint until the time of trial in this action (“the Class” or “Class”).

36. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass One (“Overtime Wages Subclass”)

All members of the Class who, within the applicable limitations period, were worked any overtime hours warranting the payment of overtime wages.

37. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Two (“First Meal Period Subclass”)

All members of the Class who, within the applicable limitations period, worked a shift of five hours or more.

38. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Three (“Second Meal Period Subclass”)

All members of the Class who, within the applicable limitations period, worked a shift of ten hours or more.

39. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Four (“Rest Period Subclass”)

All members of the Class who, within the applicable limitations period, worked a shift of 3.5 hours more.

40. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Five (“Waiting Time Subclass”)

All members of the Class who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment

41. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Six (“Vacation Wages Subclass”)

All members of the Class who earned vacation wages within the applicable limitations period and who were either voluntarily or involuntarily separated from their employment.

42. Plaintiff also seeks to certify a subclass of employees defined as:

Plaintiff Subclass Seven (“Expense Reimbursement Subclass”)

All members of the Class who, within the applicable limitations period, used his or her cell phone during the course of employment.

43. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definition with respect to issues or in any other ways. Plaintiff is the Named Representative and is a member of the Class. Plaintiff seeks

1 class-wide recovery based on the allegations set forth in this complaint. The Court can define
2 the Class and create additional subclasses as may be necessary or desirable to adjudicate
3 common issues and claims of the Class Members if, based on discovery of additional facts, the
4 need arises.

5 44. As set forth in the Prayer, below, Plaintiff will move the Court to try the Class
6 Claims before the Court in Equity before trying the legal claims to a trier of fact in this action.
7 See, *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157; *Pellegrino v. Robert Half Intern.,*
8 *Inc.* (2010) 181 Cal.App.4th 713 “[B]etter practice” is for “the trial court [to] determine the
9 equitable issues before submitting the legal ones to the jury.”]. Same, *Hodge v. Superior Court*
10 (2006) 145 Cal.App.4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1238, 1244.

11 45. This action has been brought and may be maintained as a class action pursuant
12 to Code of Civil Procedure section 382 because there is a well-defined community of interest in
13 the litigation and the proposed Class is easily ascertainable through the records Defendants are
14 required to keep.

15 46. Numerosity. The members of the Class are so numerous that individual joinder
16 of all of them as Plaintiffs is impracticable. While the exact number of the Class Members is
17 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that
18 there are more than 100 Class Members.

19 47. Commonality. Common questions of law and fact exist as to all Class Members
20 and predominate over any questions that affect only individual members of the Class. These
21 common questions include, but are not limited to:

22 48. Whether Defendants violated Labor Code sections 510, 1197, or 1194 by failing
23 to pay minimum, regular, and/or overtime wages for all hours worked, including
24 time subject to Defendants’ control, including due to Defendants’ unlawful time
25 rounding policy;

26 49. Whether Defendants violated Labor Code sections 201 and/or 202 by not paying
27 Class Members who are no longer employed by Defendants all earned wages
28 upon their termination of employment; and if so, whether such violations were

“willful” within the meaning of Labor Code section 203;

50. Whether Defendants violated Labor Code section 226 by failing to include all required accurate information on employees’ wage statements, and if so, whether this failure was willful;

51. Whether Defendants violated Labor Code sections 512 and 226.7, and section 11 of the applicable wage order, by failing to provide compliant first and second meal periods, or pay one hour of pay in lieu thereof for each missed, untimely, or interrupted meal period;

52. Whether Defendants violated Labor Code section 226.7 and section 12 of the applicable wage order by failing to provide compliant rest periods, or pay one hour of pay in lieu thereof for each non-compliant or missed rest period;

53. Whether Defendants violated Labor Code section 227.3 by failing to pay all vacation wages owed to employees upon termination of employment;

54. Whether Defendants violations Labor Code section 2802 by failing to reimburse business expenses, including but not limited to cell phone expenses;

55. Whether Defendants engaged in business acts or practices which violate California’s Unfair Competition Law (“UCL”) as it relates to their policies and practices as to wages and pay;

56. To what extent any injuries were sustained by the Class and Plaintiff Subclass Members and the appropriate type and/or measure of damages; and

57. To what extent each Defendant, including each DOE defendant, is liable to the Class and Plaintiff Subclass Members.

58. Typicality. Plaintiff’s claims are typical of the claims of the other members of the Class. Plaintiff and other members of the Class were subject to the same policies and practices of Defendants resulting in underpayment for straight-time and overtime hours, in part due to rounding. Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the Class. Defendants did not provide compliant meal or rest periods or pay premiums in lieu thereof. Defendants also failed to pay all wages, including vacation wages,

owed to Plaintiff and Class Members upon termination of employment.

59. Adequacy. Plaintiff will adequately and fairly protect the interests of the members of the Class. Plaintiff has no interest adverse to the interests of absent Class Members. Plaintiff is represented by attorneys who have substantial experience in wage-and-hour and class action law.

60. Superiority. A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the Court. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The damages suffered by each Class Member are relatively small in the sense pertinent to class action analysis, and the expense and burden of individual litigation would make it extremely difficult or impossible for the individual Class Members to seek and obtain individual relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

VI. **CAUSES OF ACTION**

FIRST CAUSE OF ACTION **FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES** **(Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198)** **(On Behalf of Plaintiff, the Class, and the Overtime Wages Subclass Against Each Defendant)**

61. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

62. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

63. Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 64. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
4 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid
6 balance of the full amount of his minimum wage or overtime compensation, including interest
7 thereon, reasonable attorney’s fees and costs of suit.”

8 65. Labor Code section 1194.2 allows employees to seek liquidated damages equal
9 to the amount of minimum wages unlawfully withheld, plus interest.

10 66. Section 4 of the applicable IWC Wage Order provides that an employer may not
11 pay employees less than the applicable minimum wage for all hours worked.

12 67. Labor Code section 510 provides in pertinent part: “Eight hours of labor
13 constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in
14 excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
15 work in any one workweek shall be compensated at the rate of no less than one and one-half
16 times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall
17 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
18 addition, any work in excess of eight hours on any seventh day of a workweek shall be
19 compensated at the rate of no less than twice the regular rate of pay of an employee.”

20 68. Section 3 of the applicable IWC Wage Order provides that an employer may not
21 pay non-exempt employees less than the applicable overtime rate for all overtime hours
22 worked.

23 69. Labor Code section 204 states, in pertinent part: “All wages, other than those
24 mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
25 employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays.”

27 70. As set forth herein, Defendants willfully breached their obligation and failed to
28 pay Plaintiff and Members of the Minimum Wages and Overtime Wages Subclasses all

1 minimum, regular, and overtime wages for all hours worked, including due to Defendants'
2 unlawful rounding policy, all in violation of Labor Code sections 204, 510, 1197, 1194 and
3 1198 and the applicable Wage Order.

4 71. As a result of the unlawful acts of Defendants, Plaintiff and the Minimum
5 Wages and Overtime Wages Subclasses Plaintiff seeks to represent have been deprived of
6 wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus
7 interest thereon, liquidated damages in an amount equal to the minimum wages unlawfully
8 unpaid, attorneys' fees, and costs to the fullest extent permitted by law.

9 72. Plaintiff, and the Minimum Wages and Overtime Wages Subclasses she seeks to
10 represent, request relief as described below.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**
13 **(Labor Code §§ 226.7 and 512; § 11 of the Applicable IWC Wage Order)**
14 **(On Behalf of Plaintiff, the Class, and the First and Second Meal Period Subclasses**
15 **Against Each Defendant)**

16 73. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
17 full herein.

18 74. At all relevant times during the Class Period, Plaintiff and all other members of
19 the Class were employees of Defendants covered by Labor Code sections 226.7 and 512, and
20 the applicable Wage Order.

21 75. Labor Code section 512(a) provides:

22 An employer may not employ an employee for a work period of more than
23 five hours per day without providing the employee with a meal period of
24 not less than 30 minutes, except that if the total work period per day of the
25 employee is no more than six hours, the meal period may be waived by
26 mutual consent of both the employer and employee. An employer may
27 not employ an employee for a work period of more than 10 hours per day
28 without providing the employee with a second meal period of not less than
30 minutes, except that if the total hours worked is no more than 12 hours,
the second meal period may be waived by mutual consent of the employer
and the employee only if the first meal period was not waived.

76. Labor Code section 226.7 provides:

(b) An employer shall not require any employee to work during any meal
or rest... period mandated pursuant to... an applicable... order of the
Industrial Welfare Commission.

1 (c) If an employee fails to provide an employee a meal period or rest
2 period in accordance with an applicable order of the Industrial Welfare
3 Commission, the employer shall pay the employee one additional hour of
4 pay at the employee's regular rate of compensation for each work day that
5 the meal period or rest period is not provided.

6 77. Section 11(A) of the applicable Wage Order provides, in pertinent part: "No
7 employer shall employ any person for a work period of more than five (5) hours without a meal
8 period of not less than 30 minutes..."

9 78. Section 11(B) of the applicable Wage Order provides, in pertinent part: "An
10 employer may not an employee for a work period of more than ten (10) hours per day without
11 providing the employee with a second meal period of not less than 30 minutes..."

12 79. As set forth herein, Defendants failed to provide Plaintiff and Members of the
13 First and Second Meal Period Subclasses with compliant meal periods as provided in Labor
14 Code sections 226.7 and 512, and failed to pay them the additional pay at the employee's
15 regular rate of compensation for each work day such a meal period was not provided in lieu
16 thereof.

17 80. As a result of Defendants' failure to comply with their obligations under Labor
18 Code sections 226.7 and 512, and the applicable Wage Order, Plaintiff and the Members of the
19 First and Second Meal Period Subclasses have suffered damages in an amount, subject to proof,
20 to the extent they were not paid additional pay owed for the Defendants' failure to provide meal
21 periods as required by law.

22 81. Plaintiff and the First and Second Meal Period Subclasses she seeks to represent
23 are entitled to recover the full amount of their unpaid additional pay for Defendants' failure to
24 provide statutory meal periods as required by law. Pursuant to Labor Code section 218.6,
25 Plaintiff and other Members of the First and Second Meal Period Subclasses are entitled to
26 recover prejudgment interest on the amount of the additional pay owed.

27 82. Plaintiff, and the First and Second Meal Period Subclasses she seeks to
28 represent, request relief as described below.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR PAY IN LIEU THEREOF
(Cal. Labor Code § 226.7; § 12 of the Applicable IWC Wage Order)
(On behalf of Plaintiff, the Class, and the Rest Period Subclass Against Each Defendant)

83. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

84. At all relevant times during the Class Period, Plaintiff and all other members of the Class were employees of Defendants covered by Labor Code section 226.7 and the applicable Wage Order.

85. Labor Code section 226.7 provides:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

86. Section 12(A) of the applicable Wage Order provides, in pertinent part:

"Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

87. Section 12(B) of the applicable wage order provides, in pertinent part: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

88. As set forth herein, Defendants failed to provide Plaintiff and members of the Rest Period Subclass with compliant rest periods as provided in Labor Code section 226.7 and failed to pay them the additional pay at the employee's regular rate of compensation for each workday in lieu of providing timely, off-duty rest period(s).

1 89. As a result of Defendants' failure to comply with their obligations under Labor
2 Code section 226.7 and the applicable Wage Order, Plaintiff and the Members of the Rest
3 Period Subclass have suffered damages in an amount, subject to proof, to the extent they were
4 not paid additional pay owed for the Defendants' failure to provide rest periods as required by
5 law.

6 90. Plaintiff and the Rest Period Subclass she seeks to represent are entitled to
7 recover the full amount of their unpaid additional pay for Defendants' failure to provide
8 statutory rest periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and
9 other members of the Rest Period Subclasses are entitled to recover prejudgment interest on the
10 amount of the additional pay owed.

11 91. Plaintiff, and the Rest Period Subclass she seeks to represent, request relief as
12 described below.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(Labor Code §§ 226 and 1174)**
16 **(On Behalf of Plaintiff and the Class Against Each Defendant)**

17 92. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
18 full herein.

19 93. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage
20 statements total hours worked by Plaintiff and members of the Class, along with gross and net
21 wages earned, and all applicable hourly rates and the total number of hours worked at each
22 corresponding rate.

23 94. Labor Code section 1174 requires Defendants to maintain and preserve, in a
24 centralized location, among other items, records showing the names and addresses of all
25 employees employed and payroll records showing the hours worked daily by, and wages paid
26 to, their employees.

27 95. Section 7 of the applicable Wage Order requires Defendants to maintain time
28 records showing, including but not limited to, when the employee begins and ends each work
period and meal period, split shift intervals, and total daily hours worked in itemized wage

statements, and must show all deductions from payment of wages, and accurately report total hours worked by Plaintiff and members of the Class.

96. As set forth herein, Defendants failed to provide accurate itemized wage statements reflecting all of the required information, all in violation of Labor Code section 226. Defendants have knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a) on each and every wage statement that should have been provided to Plaintiff and members of the Class by failing to list the correct total hours worked, gross and net wages earned, and all applicable hourly rates and the total number of hours worked at each rate. Defendants also failed to maintain accurate records of when employees began and ended work and meal periods, in violation of Labor Code section 1174.

97. Plaintiff and members of the Class suffered injuries as a result of Defendants' intentional and knowing failure to provide Plaintiff and Class Members with accurate wage statements and to maintain the writings required by Labor Code section 226(a).

98. As a result of the unlawful acts of Defendants, Plaintiff and members of the Class have suffered and continue to suffer substantial injuries, losses and actual damages related to Defendants' violations, including lost wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations.

99. Plaintiff, and the Class she seeks to represent, request relief as described below.

FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES
(Labor Code § 227.3)

(On Behalf of Plaintiff, the Class, and the Vacation Wages Subclass Against Each Defendant)

100. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

101. Labor Code section 227.3 provides: "Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such

1 contract of employment or employer policy respecting eligibility or time served; provided,
2 however, that an employment contract or employer policy shall not provide for forfeiture of
3 vested vacation time upon termination. The Labor Commissioner or a designated
4 representative, in the resolution of any dispute with regard to vested vacation time, shall apply
5 the principles of equity and fairness.”

6 102. As set forth herein, Defendants failed to pay all vacation wages earned and
7 vested to employees upon termination of their employment, in violation of Labor Code section
8 227.3.

9 103. As a result of the unlawful acts of Defendants, Plaintiff and the Vacation Wages
10 Subclass Plaintiff seeks to represent have been deprived of vacation wages in amounts to be
11 determined at trial, and are entitled to recovery of such amounts, plus interest thereon,
12 attorneys’ fees, and costs to the fullest extent permitted by law.

13 104. Plaintiff, and the Vacation Wages Subclass she seeks to represent, request relief
14 as described below.

15 **SIXTH CAUSE OF ACTION**
16 **FAILURE TO PAY WAGES TIMELY TO SEPARATED EMPLOYEES**
17 **(Labor Code §§ 201-203)**
18 **(On Behalf of Plaintiff, the Class, and the Waiting Time Subclass Against Each**
19 **Defendant)**

20 105. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
21 full herein.

22 106. Labor Code sections 201 and 202 require Defendants to pay employees all
23 wages due no later than 72 hours after resignation from employment, or immediately in the
24 case of discharge by the employer. Labor Code section 203 provides that if an employer
25 willfully fails to timely pay such wages, then the employer must, as a penalty, continue to pay
26 the subject employees’ wages until the back wages are paid in full or an action is commenced.
27 The penalty cannot exceed 30 days of wages.

28 107. Defendants willfully failed to timely pay wages to employees who were
voluntarily and/or involuntarily were terminated from their employment within the time
requirements set forth in Labor Code sections 201 and 202. Plaintiff is informed and believes

1 that Defendants' pay practices are continuing such that current employees are not being timely
2 paid wages as they work in violation of law.

3 108. More than 30 days have passed since Plaintiff and members of the Waiting Time
4 Subclass have left Defendants' employ.

5 109. As set forth herein, Plaintiff and the proposed Waiting Time Subclass are
6 entitled to compensation for unpaid minimum, regular, and overtime wages, and premium
7 wages for non-compliant meal and rest periods, but to date have not received such
8 compensation.

9 110. As a consequence of Defendants' willful conduct in not paying wages owed,
10 separated members of the Class are entitled to 30 days' wages as a penalty under Labor Code
11 section 203 for failure to pay legal wages, with interest and attorneys' fees and costs.

12 111. Plaintiff, and the Waiting Time Subclass she seeks to represent, request relief as
13 described below.

14 **SEVENTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
16 **(Labor Code §§ 2802 and 2804)**

17 **(On Behalf of Plaintiff, the Class, and the Expense Reimbursement Subclass Against Each**
18 **Defendant)**

19 112. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
20 full herein.

21 113. Labor Code section 2802(a) states: "An employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
24 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
25 believed them to be unlawful."

26 114. Labor Code section 2804 provides that this right to reimbursement cannot be
27 waived.

28 115. Defendants failed to reimburse Plaintiff and similarly-situated employees for
necessary business expenses, including but not limited to cell phone expenses.

116. As set forth herein, Plaintiff and the proposed Expense Reimbursement Subclass

1 are entitled to reimbursement for business expenses.

2 117. Plaintiff, and the Expense Reimbursement Subclass she seeks to represent,
3 request relief as described below.

4 **EIGHTH CAUSE OF ACTION**
5 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
6 **(Business and Professions Code §§ 17200, *et seq.*)**
7 **(On Behalf of Plaintiff and the Class Against Each Defendant)**

8 118. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
9 full herein.

10 119. Defendants' systematic and routine failure to pay minimum, regular, and
11 overtime wages, meal and rest period premiums, and vacation wages constitutes unlawful,
12 deceptive, and unfair business acts or practices within the meaning of Business and Professions
13 Code sections 17200, *et seq.* These practices violated the applicable State of California
14 Industrial Welfare Commission Wage Orders, regulations and statutes, or are practices which
15 are otherwise unfair, deceptive, and unlawful.

16 120. This cause of action is brought under Business and Professions Code sections
17 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
18 and pursuant to Business and Professions Code section 17208, Plaintiff and members of the
19 proposed Class seek restitution of premium wages and other pay owed, where such wages were
20 due during the Class Period, according to proof.

21 121. This cause of action is brought as a cumulative remedy as provided in Business
22 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
23 Plaintiff, the Class," the "Overtime Wages Subclass," the "First Meal Period Subclass," the
24 "Second Meal Period Subclass," the "Rest Period Subclass," the "Expense Reimbursement
25 Subclass," and/or the "Vacation Wages Subclass" for any portion of time commencing within
26 three (3) years before filing this complaint, and as the primary remedy for Plaintiff and
27 aforementioned Subclasses for any portion of time during the *fourth year* before filing this
28 Complaint, as this period of time exceeds the general three-year statute of limitations on
statutory wage claims, and is a basis for restitution for all wage claims on an equitable basis

1 and subject to court adjudication.

2 122. As a result of Defendants' unlawful and unfair business practices, described
3 above, the Subclasses listed above have suffered damages and are entitled to restitution in an
4 amount according to proof for a time period of four years prior to the filing of this Complaint
5 and until such time as (1) Defendants cease their unlawful business practices, (2) the
6 commencement of trial, and/or (3) a date otherwise determined by the Court pursuant to the
7 laws of California.

8 123. Plaintiff, on behalf of herself and the proposed Class, requests the violations of
9 each Defendant be enjoined, and other equitable relief be provided, as this court deems proper,
10 including an order requiring Defendants to make tax contributions on the accrued wages in the
11 form of FICA, Social Security, Medicare, Unemployment Insurance, or other appropriate
12 payments. Defendants' conduct, business acts, and practices undermined competition and were
13 done in order to avoid costs other lawful employers comply with in order to avoid payment of
14 full compensation, wages, and statutory penalties owed.

15 124. Plaintiff, and the members of the Class she seeks to represent, request relief as
16 described below, including restitution owed, in an amount according to proof, and for
17 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code, Code of
18 Civil Procedure section 1021.5, or other applicable law.

19 **NINTH CAUSE OF ACTION**
20 **PAGA CIVIL PEANLTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND**
21 **OVERTIME WAGES**

22 **(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2698, *et seq.*)**
23 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

24 125. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
25 full herein.

26 126. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
27 law, any provision of this code that provides for a civil penalty to be assessed and collected by
28 the Labor and Workforce Development Agency or any of its departments, divisions,
commissions, boards, agencies, or employees, for a violation of this code, may, as an
alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified
2 in Section 2699.3.”

3 127. Labor Code section 2699(f)(2) states: “For all provisions of this code except
4 those for which a civil penalty is specifically provided, there is established a civil penalty for a
5 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
8 each aggrieved employee per pay period for each subsequent violation.”

9 128. During the PAGA Period, as alleged herein, Defendants failed to pay Plaintiff
10 and other aggrieved employees all minimum, regular, and overtime wages for all hours worked,
11 including due to Defendants’ unlawful rounding policy, in violation of Labor Code sections
12 204, 510, 1194, 1197, and 1198.

13 129. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
14 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
15 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and
16 costs all recoverable in an amount according to proof.

17 130. Plaintiff, as a representative of the general public, will and does seek to recover
18 any and all penalties for each and every violation, in an amount according to proof, as to those
19 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
20 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
21 of California.

22 **TENTH CAUSE OF ACTION**
23 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY**
24 **IN LIEU THEREOF**
25 **(Labor Code §§ 226.7, 512, and 2698, *et seq.*; § 11 of the Applicable IWC Wage Order)**
26 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

27 131. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
28 full herein.

132. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
of civil penalties for violations of the labor code, to be recovered through a civil action brought

1 by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3.

3 133. Defendants failed to provide all lawful meal periods as required by law. Plaintiff
4 and other aggrieved employees were not paid all meal period premiums for non-compliance
5 with Labor Code section 226.7.

6 134. During the PAGA Period, as set forth herein, Defendants violated Labor Code
7 sections 226.7, 512 and 1198, as well as the "Meal Periods" section of the applicable IWC
8 Wage Order. As a result, Plaintiff is entitled to recover, civil penalties and pursuant to Labor
9 Code sections 558(a)(1)-(2) and 2699(a) and (f)(2) attorney's fees, expenses, and costs of suit.

10 135. Plaintiff, as a representative of the general public, will and does seek to recover
11 any and all penalties for each and every violation, in an amount according to proof, as to those
12 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
13 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
14 of California.

15 **ELEVENTH CAUSE OF ACTION**
16 **PAGA CIVIL PEANLTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN**
17 **LIEU THEREOF**

18 **(Labor Code §§ 226.7 and 2698, et seq.; § 12 of the Applicable IWC Wage Order)**
19 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

20 136. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
21 full herein.

22 137. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
23 of civil penalties for violations of the labor code, to be recovered through a civil action brought
24 by an aggrieved employee on behalf of himself or herself and other current or former
25 employees pursuant to the procedures specified in Section 2699.3.

26 138. Defendants failed to authorize and permit all rest periods as required by law.
27 Plaintiff and other aggrieved employees were not paid all rest period premiums for non-
28 compliance with Labor Code section 226.7.

29 139. During the PAGA Period, as set forth herein, Defendants violated Labor Code
30 sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable IWC Wage

Order and are liable to Plaintiff and other aggrieved employees for penalties as required by Cal. Labor Code sections 2699(a) and (f)(2), attorney's fees and costs.

140. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

TWELFTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS

(Labor Code §§ 226 and 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

141. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

142. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements total hours worked by Plaintiff and other aggrieved employees, along with gross and net wages earned, and all applicable hourly rates and the total number of hours worked at each corresponding rate.

143. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

144. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

145. During the PAGA Period, as set forth herein, Defendants failed to provide accurate itemized wage statements in violation of Labor Code section 226(a).

146. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs,

1 all recoverable in an amount according to proof.

2 147. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
5 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
6 of California.

7 **THIRTEENTH CAUSE OF ACTION**
8 **PAGA CIVIL PEANLTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
9 **(Labor Code §§ 1174, 1198, and 2698, *et seq.*; § 7 of the Applicable IWC Wage Order)**
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

10 148. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
11 full herein.

12 149. Labor Code section 1174 requires Defendants to maintain and preserve, in a
13 centralized location, among other items, records showing the names and addresses of all
14 employees employed and payroll records showing the hours worked daily by, and wages paid
15 to, their employees.

16 150. Section 7 of the applicable Wage Order requires Defendants to maintain time
17 records showing, including but not limited to, when the employee begins and ends each work
18 period and meal period, split shift intervals, and total daily hours worked in itemized wage
19 statements, and must show all deductions from payment of wages, and accurately report total
20 hours worked by Plaintiff and other aggrieved employees.

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

25 152. Labor Code Section 1174.5 provides: “Any person employing labor who
26 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate
27 and complete records required by subdivision (d) of Section 1174, or to allow any member of
28 the commission or employees of the division to inspect records pursuant to subdivision (b) of

1 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

2 153. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
3 of civil penalties for violations of the labor code, to be recovered through a civil action brought
4 by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Section 2699.3.

6 154. During the PAGA Period, as set forth herein, Defendants failed to maintain
7 accurate records in violation of Labor Code sections 1174 and 1198 and section 7 of the
8 applicable Wage Order.

9 155. As a result, Defendants willfully violated the Labor Code and are liable to
10 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections
11 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and
12 costs, all recoverable in an amount according to proof.

13 156. Plaintiff, as a representative of the general public, will and does seek to recover
14 any and all penalties for each and every violation, in an amount according to proof, as to those
15 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
16 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
17 of California.

18 **FOURTEENTH CAUSE OF ACTION**
19 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE VACATION WAGES**
20 **(Labor Code §§ 227.3 and 2698, *et seq.*)**
21 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

22 157. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
23 full herein.

24 158. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
25 of civil penalties for violations of the labor code, to be recovered through a civil action brought
26 by an aggrieved employee on behalf of himself or herself and other current or former
27 employees pursuant to the procedures specified in Section 2699.3.

28 159. During the PAGA Period, as set forth herein, Defendants failed to provide
vacation wages in violation of Labor Code section 227.3.

FIFTEENTH CAUSE OF ACTION
PAGA CIVIL PEANLTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
EMPLOYMENT AND UPON SEPARATION FROM EMPLOYMENT
(Labor Code §§ 201-204, 210, 256, and 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

163. Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Section 204(d) states: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

165. Labor Code section 210(a) provides: “(a) In addition to, ***and entirely independent and apart from***, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation,

1 one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
2 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
3 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

4 166. California Labor Code section 256 states that a civil penalty shall be imposed
5 “in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

6 167. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
7 of civil penalties for violations of the labor code, to be recovered through a civil action brought
8 by an aggrieved employee on behalf of himself or herself and other current or former
9 employees pursuant to the procedures specified in Section 2699.3.

10 168. During the PAGA Period, as set forth herein, Defendants failed to pay all wages
11 and penalties owed to Plaintiff and other aggrieved employees within the time required by Cal.
12 Labor Code sections 201-204. Defendants further failed to pay all waiting time penalties as
13 required by Labor Code section 203.

14 169. As a result, Defendants violated the Labor Code sections 201-204 and are liable
15 to Plaintiff, and other aggrieved employees, for penalties and restitution as required by Labor
16 Code sections 210, 256, and 2699(a), or, in the alternative, section 2699(f)(2), and recoverable
17 in an amount according to proof.

18 170. Plaintiff, as a representative of the general public, will and does seek to recover
19 any and all penalties for each and every violation, in an amount according to proof, as to those
20 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
21 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
22 of California.

23 **SIXTEENTH CAUSE OF ACTION**
24 **PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 **(Labor Code §§ 2802, 2804 and 2698, *et seq.*)**
26 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

27 171. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
28 full herein.

172. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection

1 of civil penalties for violations of the labor code, to be recovered through a civil action brought
2 by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Section 2699.3.

4 173. During the PAGA Period, as set forth herein, Defendants failed to reimburse
5 business expenses in violation of Labor Code section 227.3.

6 174. As a result, Defendants willfully violated the Labor Code and are liable to
7 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section
8 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all
9 recoverable in an amount according to proof.

10 175. Plaintiff, as a representative of the general public, will and does seek to recover
11 any and all penalties for each and every violation, in an amount according to proof, as to those
12 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
13 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
14 of California.

15 VII.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff PENNY A. SCOTT, on behalf of herself and all other
18 aggrieved and similarly-situated employees, prays for judgment as follows:

19 a. For certification of this action as a class action pursuant to Code of Civil
20 Procedure section 382;

21 b. For appointment of Plaintiff as the representative of the Class and Subclasses;

22 c. For appointment of counsel for Plaintiff as Class Counsel;

23 d. For an order bifurcating the action into liability and damages stages, or as
24 otherwise efficient for the administration of justice;

25 e. On the First Cause of Action, for unpaid minimum, regular, and/or overtime
26 wages as required by Labor Code sections 510, 1194-1197, in an amount according to proof;

27 f. On the First Cause of Action, for liquidated damages under Labor Code section
28 1194.2 for each Class and "Overtime Wages" Subclass Member for unpaid minimum wages

1 under Labor Code section 1194;

2 g. On the Second Cause of Action for unpaid Premium Wages for non-compliant
3 meal periods at one hour of regular rate of pay to each “First Meal Period” and “Second Meal
4 Period” Subclass Member pursuant to Labor Code sections 226.7 and 512, and Section 11 of
5 the applicable Wage Order;

6 h. On the Third Cause of Action for unpaid Premium Wages for non-compliant rest
7 periods at one hour of regular rate of pay to each “Rest Period” Subclass Member pursuant to
8 Labor Code section 226.7 and Section 12 of the applicable Wage Order;

9 i. On the Fourth Cause of Action for statutory damages and penalties under Labor
10 Code sections 226(e) and (g), to the extent provided by law, up to a maximum of \$4,000.00 per
11 Class Member, in an amount according to proof;

12 j. On the Fifth Cause of Action, for unpaid vacation wages as required by Labor
13 Code section 227.3, in an amount according to proof;

14 k. On the Sixth Cause of Action, for statutory damages of up to 30 days of pay at
15 the regular rate of pay for failing to timely remit payment of wages to former employees in the
16 “Waiting Time Subclass” pursuant to Labor Code sections 201-203, in an amount according to
17 proof;

18 l. On the Seventh Cause of Action, for unreimbursed business expenses as
19 required by Labor Code section 2802, in an amount according to proof;

20 m. On the Eighth Cause of Action, for the Class, to recover all restitution for
21 minimum, regular, and overtime wages, meal and rest period premiums, vacation wages, and
22 any other form of wages that were not paid to members of the Class during the Class Period as
23 a result of conduct of all Defendants. Said restitution may be calculated in accordance with
24 California Business and Professions Code sections 17203 and 17204, including trial of UCL
25 claims by the Court in equity before legal claims in an amount according to proof;

26 n. For maintenance of this action as a Representative Action under the PAGA, and
27 providing Plaintiff and her counsel with all enforcement capability as if this action has been
28 instituted by the Department of Labor Standards enforcement (“DLSE”);

1 o. For recovery of civil penalties as permitted by Labor Code sections 2699(a) and
2 (f)(2), 1197.1, and 558(a)(1)-(2), in an amount according to proof, for failure to pay all
3 minimum, regular, and overtime wages;

4 p. For recovery of civil penalties as permitted by Labor Code section 226.3, for
5 failing to provide accurate itemized wage statements, in an amount to be assessed and according
6 to proof;

7 q. For recovery of civil penalties as permitted by Labor Code section 1174.5, for
8 failing to maintain accurate records, in an amount to be assessed and according to proof;

9 r. For recovery of civil penalties as permitted by Labor Code sections 210, for
10 failing to pay wages timely during employment;

11 s. For recovery of civil penalties as permitted by Labor Code section 256 for
12 failing to provide wages timely to terminated employees upon separation from employment;

13 t. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), where
14 a statutory civil penalty is not provided, including for unreimbursed business expenses;

15 u. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
16 to any restitution recovery;

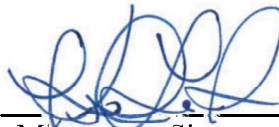
17 v. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
18 California Labor Code sections 218.5, 1194, 2698, and/or Code of Civil Procedure section
19 1021.5 on a public benefit theory; and all other applicable state laws;

20 w. For injunctive relief; and

21 x. Such other legal equitable relief as this Court deems necessary, just, equitable
22 and proper.

23 COHELAN KHOURY & SINGER

24
25 Dated: July 21, 2021

By:  _____

Michael D. Singer

Kristina De La Rosa

27 Counsel for Plaintiff PENNY A. SCOTT, on behalf of
28 herself and other aggrieved and similarly-situated
employees

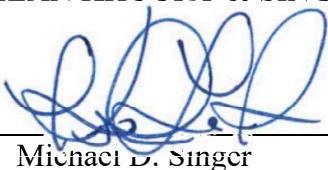
VIII.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER

Dated: July 21, 2021

By: 

Michael D. Singer

Kristina De La Rosa

Counsel for Plaintiff PENNY A. SCOTT, on behalf of
herself and other aggrieved and similarly-situated
employees