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

BRIANA ARREOLA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FLEET SERVICES, INC., a California
Corporation; DICK VAN ECK, an individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2023-01316151-CU-OE-CXC
*[Assigned for all purposes to Hon. Lon F.
Hurwitz, Dept. CX103]*

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 Pay Vested Vacation;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements;
- (9) Unfair and Unlawful Competition;

PAGA CLAIMS

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

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her former employer(s), Defendants Fleet
5 Services, Inc., Dick Van Eck, 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 timely pay wages upon
10 separation of employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately August 2022 through
12 January 2023.

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

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked.

19 5. Additionally, Defendants paid Plaintiff and the Represented Employees on an
20 hourly basis but also paid additional earned compensation in the form of gift cards, bonuses, and
21 similar pay. However, during workweeks where the Plaintiff and the Represented Employees
22 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
23 to include this additional nondiscretionary compensation in the calculations for the regular rate
24 of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-
25 established rule that overtime must always be paid at time and one-half the regular rate of pay.

26 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
27 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
28 the Represented Employees were subjected to meal period violations when they were: (1) unable

1 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
2 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
3 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
4 in excess of 10 hours.

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

13 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
14 Employees to incur necessary business-related expenses and costs without reimbursement. For
15 example, Plaintiff was required to incur substantial expenses without reimbursement during
16 employment, including but not limited to maintaining a personal cellular phone and data plan in
17 order to carry out their duties for Defendants without reimbursement.

18 9. Also, at all relevant times, Defendants utilized a policy and practice through
19 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
20 “vacation hours”). However, on occasions when Plaintiff and the Represented Employees had
21 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
22 these wages and, further, failed to pay them at the “final rate” required by Labor Code § 227.3.

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

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

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

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

13 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
14 monetary relief against Defendants and each of them, on behalf of herself and the Represented
15 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
16 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
18 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
19 right to name additional representatives throughout the State of California.

20 **II. JURISDICTION**

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

23 **III. VENUE**

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

1 **IV. PARTIES**

2 **Plaintiff**

3 17. Plaintiff and Class Representative Briana Arreola was employed by Defendants
4 from approximately August 2022 to January 2023 and performed work for Defendants in Orange
5 County.

6 **Defendants**

7 18. Plaintiff is informed and believes and thereon alleges that Defendant Fleet
8 Services, Inc. is a California corporation authorized to and doing business in Orange County,
9 California, with its principal place of business in Anaheim, California. Plaintiff is also informed
10 and believes that Defendant Fleet Services, Inc. is and/or was the legal employer of Plaintiff and
11 the Represented Employees during the applicable statutory periods.

12 19. Plaintiff is informed and believes and thereon alleges that Defendant Dick Van
13 Eck is an individual authorized to and doing business in Orange County, California, with his
14 principal place of business in Anaheim, California. Plaintiff is also informed and believes that
15 Defendant Dick Van Eck is and/or was the legal employer of Plaintiff and the Represented
16 Employees during the applicable statutory periods.

17 20. 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 21. Plaintiff is informed and believes and thereon alleges that she 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 22. 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 23. 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 24. 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 25. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 26. 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 27. 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 28. 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 29. 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 **Vested Vacation Subclass**

21 All Represented Employees who had accrued but unused
22 vacation upon separation of employment during the
23 Relevant Time Period.

24 **Waiting Time Penalties Subclass**

25 All Represented Employees who separated from their
26 employment with Defendants during the Relevant Time
27 Period.
28

1 **Wage Statement Penalties Subclass**

2 All Represented Employees during the Relevant Time
3 Period.

4 30. Plaintiff reserves the right to amend or modify the class description with greater
5 specificity or further division into subclasses or limitation to particular issues as appropriate.

6 31. Plaintiff, as Class Representative, is a member of the class and subclasses that she
7 seeks to represent.

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

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

14 34. **Commonality:** There are questions of law and fact common to the class which
15 predominate over any questions affecting only individual members of the class, including
16 without limitation:

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

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

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

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

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

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

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

15 viii. Whether Defendants violated California Business & Professions Code §§
16 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
17 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

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

27 36. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
28 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in

1 conflict with those of the Class. Class Representative's counsel are competent and experienced in
2 litigating large employment class actions and other complex litigation matters, including cases
3 like this case.

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

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 *Plaintiff and the Represented Employees Against All Defendants*

16 38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 39. Plaintiff and the Represented Employees were not exempt from the requirement
19 to be paid at least the applicable California minimum wage throughout the statutory period for
20 each hour worked.

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

26 41. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
27 Represented Employees for all hours worked.

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

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

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

11 45. 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 46. During 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 47. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
19 Employees have been damaged in amounts to be proven at trial.

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

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

26 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

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

13 53. Additionally, Defendants paid Plaintiff and the Represented Employees on an
14 hourly basis but also paid additional nondiscretionary compensation (such as commissions
15 and/or bonuses). However, during workweeks where the Represented Employees worked
16 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
17 include that compensation in the calculations for the regular rate of pay – violating the well-
18 established rule that overtime must always be paid at time and one-half the regular rate of pay.

19 54. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
20 Represented Employees for all overtime hours worked.

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

25 56. Plaintiff is informed and believes and thereon alleges that Defendants
26 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
27 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.
28

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

58. 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.

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass Against All Defendants

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

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

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

65. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
2 except that if the total work period per day of the employee is no more than six hours, the meal
3 period may be waived by mutual consent of both the employer and the employee. Employers
4 may not employ an employee for a work period more than 10 hours per day without providing
5 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

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

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

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

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

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

14 73. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

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

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

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

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

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

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

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

7 84. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing
9 reimbursement of business expenses.

10 85. Labor Code § 2802(a) requires that the employer indemnify its employees for
11 expenses and losses incurred while discharging their duties or in obedience to the directions of
12 their employer.

13 86. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
14 Employees to incur necessary business-related expenses and costs without reimbursement. For
15 example, Plaintiff was required to incur substantial expenses without reimbursement during
16 employment, including but not limited to maintaining a personal cellular phone and data plan in
17 order to carry out their duties for Defendants without reimbursement.

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

21 88. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
22 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
23 Defendants, thereby receiving an economic benefit.

24 89. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
25 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
26 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
27 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
28 to be proved at time of trial.

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

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

SIXTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION
(Labor Code § 227.3)

Plaintiff and the Vested Vacation Subclass Against All Defendants

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

93. Plaintiff and the Vested Vacation Subclass were employees of Defendants who did not receive proper protections and benefits of the laws governing the payment of vested vacation time and/or paid time off upon separation of employment.

94. Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay.

95. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Vested Vacation Subclass accrued vacation hours. However, on occasions

1 when Plaintiff and the Vested Vacation Subclass had accrued but unused vacation hours upon
2 separation of employment, Defendants failed to pay these wages and, further, failed to pay them
3 at the “final rate” required by Labor Code § 227.3.

4 96. As a result, Plaintiff and the Vested Vacation Subclass did not receive
5 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

6 97. At all relevant times herein, Defendants failed to pay the Vested Vacation
7 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
8 separation from employment, thereby receiving an economic benefit.

9 98. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
10 them, knowingly refused to perform their obligations to compensate the Vested Vacation
11 Subclass for all vested but unused vacation time and/or paid time off upon separation from
12 employment.

13 99. As a result of Defendants’ violations of Labor Code § 227.3, Plaintiff and the
14 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
15 interest, attorneys’ fees, and costs as permitted under California law.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO TIMELY PAY FINAL WAGES**

18 (Labor Code §§ 201 – 203)

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

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

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

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

1 103. 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.

4 104. 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.

7 105. 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.

10 106. 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, meal and rest
13 period premiums, and vested vacation wages.

14 107. Additionally, at all relevant times, Defendants failed to pay all mandated sick
15 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

16 108. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
17 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
18 employee uses paid sick time, whether or not the employee actually works overtime in that
19 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
20 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
21 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

22 109. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
23 hourly basis plus additional compensation in the form of commissions and/or bonuses.
24 However, on the occasions that the Waiting Time Penalties Subclass took sick time and received
25 paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the
26 additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at
27 the time of separation of employment.
28

1 110. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
3 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
4 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
5 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
6 according to proof at trial and within the jurisdiction of this Court.

7 **EIGHTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

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

11 111. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

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

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

22 114. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
23 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
24 total hours worked (for example, the wage statements failed to accurately reflect the correct
25 compensable hours); failure to accurately state gross wages earned; failure to accurately state all
26 deductions; failure to accurately state net wages earned; failure to state the applicable hourly
27 rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay
28 period; failure to accurately state the name and address of the legal entity of the employer; and

1 failure to accurately state the corresponding number of hours worked at each hourly rate.

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

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

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

25 118. Plaintiff has also been injured as a result of having to bring this action to attempt
26 to obtain correct wage information following Defendants' refusal to comply with many of the
27 mandates of California's Labor Code and related laws and regulations.
28

1 119. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
2 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
3 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
4 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
5 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
6 applicable penalty is all in an amount to be shown according to proof at trial.

7 **NINTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

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

10 *Plaintiff and the Represented Employees against All Defendants*

11 120. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

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

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

19 123. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay all wages owed, including minimum, regular, overtime,
21 sick, and vacation wages, failure to provide mandated meal periods and rest breaks, failure to
22 reimburse business expenses, and failure to timely pay wages upon separation of employment,
23 all to decrease their costs and increase profits.

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

26 125. As a result of Defendants' failure to comply with the Labor Code and IWC
27 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
28 an amount to be shown according to proof at trial. Defendants' ongoing violations of the

1 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

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

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

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

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

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

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

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

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

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

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

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

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

3 **TENTH CAUSE OF ACTION**

4 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

6 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

12 138. Plaintiff and the Aggrieved Employees were not provided all minimum and
13 regular wages due to Defendants' failure to accurately record and compensate for all hours
14 worked. For example, the Aggrieved Employees were frequently required to perform work after
15 clocking out at the end of their shift to complete tasks for Defendant, yet they were not paid for
16 this time spent under the direction and control of Defendants. These practices violate California
17 law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not
18 allow employers to require employees to routinely work for minutes off the clock without
19 compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when
20 employee is under company's control and where the tasks served the employer's interests).

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

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

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

1 142. 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 **ELEVENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

22 147. Plaintiff and the Represented Employees were not provided all overtime wages
23 due to Defendants' failure to accurately record and compensate for all hours worked. For
24 example, the Aggrieved Employees were frequently required to perform work after clocking out
25 at the end of their shift to complete tasks for Defendants, yet they were not paid for this time
26 spent under the direction and control of Defendants. These practices violate California law. See
27 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
28 employers to require employees to routinely work for minutes off the clock without

1 compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when
2 employee is under company’s control and where the tasks served the employer’s interests).

3 148. Additionally, at all relevant times, Plaintiff and the Aggrieved Employees were
4 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the
5 occasions when Plaintiff and the Aggrieved Employees worked overtime hours and received
6 additional earned compensation during the same workweek, Defendants failed to properly
7 include these amounts in the calculations for the regular rate of pay – violating the well-
8 established rule that overtime must always be paid at time and one-half the regular rate of pay.

9 149. As a result of these policies and practices, Defendants failed to pay Plaintiff and
10 the Aggrieved Employees for all overtime hours worked.

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

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

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

21 **TWELFTH CAUSE OF ACTION**

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

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

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 153. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

27 154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
28 who did not receive proper protections and benefits of the laws governing meal periods.

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

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

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

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

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

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

1 Employees to take meal periods in accordance with California law.

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

5 **THIRTEENTH CAUSE OF ACTION**

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

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

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

3 168. 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.

7 169. 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 **FOURTEENTH CAUSE OF ACTION**

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

12 (Labor Code § 2802)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

16 171. 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.

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

21 173. At all relevant times herein mentioned, as a condition of employment, Defendants
22 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
23 and costs without reimbursement.

24 174. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
25 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
26 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.
27
28

1 175. 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 **FIFTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

6 (Labor Code § 227.3)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 177. Plaintiff and the Aggrieved Employees were employees of Defendants who did
11 not receive proper protections and benefits of the laws governing the payment of vested vacation
12 time and/or paid time off upon separation of employment.

13 178. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
14 vacation, paid time off, or compensated time off policy must, upon an employee's separation
15 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
16 final rate of pay.

17 179. At all relevant times, Defendants utilized a policy and practice through which
18 Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively,
19 "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3.

20 180. For instance, Defendants failed to pay all accrued and unused vacation hours to
21 the Aggrieved Employees upon separation of employment. And, for vacation hours that
22 Defendants *did* pay, those were only calculated and paid based on the base rate of pay for the
23 Aggrieved Employees. But Labor Code § 227.3 requires that vested vacation be cashed out at
24 the final rate of pay. And, since the final rate of pay for Plaintiff and the Aggrieved Employees
25 was often higher than the base rate (due to other nondiscretionary compensation), Defendants
26 failed to correctly calculate and pay all vested vacation wages due and owing
27
28

1 181. 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 **SIXTEENTH CAUSE OF ACTION**

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

6 (Labor Code § 204)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 183. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws regarding the timing of payment
12 of wages each period.

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

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

21 186. At all relevant times herein, Defendants did not provide Plaintiff and the
22 Aggrieved Employees with all wages due and owing each period within the time required by
23 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
24 Employees with all wages due and owing each pay period, including, but not limited to,
25 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
26 at the proper rate, within the time specified by Labor Code § 204.

1 187. 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 **SEVENTEENTH CAUSE OF ACTION**

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

6 (Labor Code §§ 201 – 203)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 189. 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 the timing and
12 payment of final wages.

13 190. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

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

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

21 193. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
22 Employees with all wages due and owing upon separation of employment, including, but not
23 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
24 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

195. 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.

EIGHTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

199. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees 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); failure to accurately state the corresponding number of hours worked at each hourly rate; and failure to accurately identify the name and address of the legal entity of the employer.

200. 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.

201. 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.

VII. 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. As to the Tenth through Eighteenth Causes of Action, the assessment of all applicable and available remedies under PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Ninth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

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

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

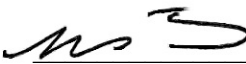

5 12. For such other relief as the Court deems just and proper.

6 **DEMAND FOR JURY TRIAL**

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

9
10 Dated: September 20, 2023

LAUBY, MANKIN & LAUBY LLP

11
12 BY:  
13 Brian J. Mankin, Esq.
14 Misty M. Lauby, Esq.
 Attorneys for Plaintiff

[illegible]

On October 10, 2023, I caused to be served the foregoing document(s) described as follows:

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.

[] **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
Tracie Chiarito, Declarant

SERVICE LIST

Shannon R. Finley, Esq.

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