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Individually and on behalf of all others similarly situated
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 Heather De Vries, Individually and on behalf
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 Wollborg-Mitchelson Personnel Service,
16 Inc.; Health Net of California, Inc. and Does
1 through 20, inclusive,

17 Defendants.
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Case No.: 34-2021-00301282

Honorable Lauri A. Damrell – Dept. 28

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate, Itemized Wage Statements;
6. Failure to Reimburse for Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*;
8. Enforcement of Labor Code § 2698 Et. Seq. (“PAGA”)

Jury Trial Demanded

1 Plaintiff Heather De Vries, individually and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Heather De Vries (“Plaintiff”) brings this putative class action against
5 Defendants Wollborg-Mitchelson Personnel Service, Inc. (“Defendant Wollborg-
6 Mitchelson”), Defendant Health Net of California Inc. (“Defendant Health Net”) and Does 1
7 through 20, inclusive (collectively, “Defendants”), on behalf of herself individually and a
8 putative class of non-exempt employees employed by Defendants throughout California.

9 2. Defendant Wollborg-Mitchelson is a California corporation and a temporary
10 services employer which provides temporary service workers to companies in California.

11 3. Defendant Health Net is a California corporation which provides insurance
12 coverage.

13 4. Through this action, Plaintiff alleges that Defendants have engaged in a
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
16 unfair competition.

17 5. Plaintiff is informed and believes, and thereon alleges, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) Failing to pay all wages for all hours worked, including minimum and
20 overtime wages;
- 21 (b) Failing to provide meal periods or compensation in lieu thereof;
- 22 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
23 thereof;
- 24 (d) Failing to provide accurate, itemized wage statements; and
- 25 (e) Failing to reimburse all reasonable and necessary business expenses.

26 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
27 behalf of herself and all others similarly situated in California to recover, among other things,
28 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant

1 to Cal. Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12 1194, 1194.2, 1197, 1198, 2800,
2 and 2802.

3 **JURISDICTION AND VENUE**

4 7. This is a class action, pursuant to California Code of Civil Procedure § 382.
5 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional
6 limits of the Superior Court and will be established according to proof at trial.

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

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

16 10. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business or have offices in this county and the acts and omissions alleged
18 herein took place in this county.

19 **THE PARTIES**

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

22 12. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
23 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
24 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
25 and the State of California.

26 13. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to
28 amend this Complaint and serve such fictitiously named Defendants once their names and

1 capacities become known.

2 14. Plaintiff is informed and believes, and thereon alleges, that each Defendants
3 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
4 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
5 Defendants are legally attributable to the other Defendants. Furthermore, defendants in all
6 respects acted as the employer and/or joint employer of Plaintiff and the class members.

7 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
9 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act
10 on the other's behalf. The acts of any and all Defendants were in accordance with, and
11 represent, the official policy of Defendants.

12 16. At all relevant times, Defendants, and each of them, acted within the scope of
13 such agency or employment, or ratified each and every act or omission complained of herein.
14 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions
15 of each and all the other Defendants in proximately causing the damages herein alleged.

16 17. Plaintiff is informed and believes, and thereon alleges, that each of said
17 Defendants are in some manner intentionally, negligently or otherwise responsible for the
18 acts, omissions, occurrences and transactions alleged herein.

19 **CLASS ACTION ALLEGATIONS**

20 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
21 herself and all others similarly situated who were affected by Defendants' Labor Code,
22 Business and Professions Code §§ 17200 and IWC Wage Order violations.

23 19. All claims alleged herein arise under California law for which Plaintiff seeks
24 relief authorized by California law.

25 20. Plaintiff's proposed classes consists of and is defined as follows:

26 **California Labor Class**

27 All current or former non-exempt California employees of Defendants from
28

1 four years and 179 days preceding the filing of this Complaint until judgment.¹

2 21. Members of the California Labor Class described above will be collectively
3 referred to as “Class Members.” Plaintiff reserves the right to establish subclasses, or modify
4 any Class or Subclass definition, as appropriate based on investigation, discovery and specific
5 theories of liability.

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

10 (a) Whether Defendants failed to compensate Plaintiff and Class Members to
11 work off-the-clock, resulting in a failure to pay all minimum wages and
12 overtime wages;

13 (b) Whether Defendants deprived Plaintiff and Class Members of compliant meal
14 periods or required Plaintiff and Class Members to work through meal periods
15 without compensation;

16 (c) Whether Defendants deprived Plaintiff and Class Members of compliant rest
17 breaks;

18 (d) Whether Defendants deprived Plaintiff and Class Members of accurate,
19 itemized wage statements;

20 (e) Whether Defendants required Plaintiff and Class Members to use their
21 personal cellular phones and home-internet to perform work and then failed to
22 reimburse Plaintiff and Class Members for a reasonable percentage of these
23 costs, resulting in failure to reimburse Plaintiff and Class Members for all
24 business expenses necessarily incurred in their duties; and

25 (f) Whether Defendants engaged in unfair business practices in violation of
26 Business & Professions Code §§ 17200, *et seq.*

27
28 ¹ The statute of limitations for this matter were tolled for 179 days pursuant to Cal. Rules of
Court, Appendix I, Emergency Rule No. 9.

1 23. There is a well-defined community of interest in this litigation and the
2 California Labor Class is readily ascertainable:

3 (a) Numerosity: The Class Members are so numerous that joinder of all
4 members is impractical. Although the Class Members are unknown to
5 Plaintiff at this time, on information and belief, the total number of
6 individuals who make up the Class Members are estimated to be greater
7 than 100 individuals. The identities of the Class Members are readily
8 ascertainable by inspection of Defendants' employment and payroll
9 records.

10 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of
11 the claims (or defenses, if any) of the Class Members because
12 Defendants' failure to comply with the provisions of California wage
13 and hour laws entitled each class member to similar pay, benefits and
14 other relief. The injuries sustained by Plaintiff are also typical of the
15 injuries sustained by the Class Members because they arise out of and
16 are caused by Defendants' common course of conduct as alleged
17 herein.

18 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately
19 represent and protect the interests of all members of the California
20 Labor Class because it is in her best interest to prosecute the claims
21 alleged herein to obtain full compensation and penalties due to her and
22 the Class Members. Plaintiff's attorneys, as proposed class counsel,
23 are competent and experienced in litigating large employment class
24 actions and are versed in the rules governing class action discovery,
25 certification and settlement. Plaintiff has incurred and, throughout the
26 duration of this action, will continue to incur attorneys' fees and costs
27 that have been and will be necessarily expended for the prosecution of
28 this action for the substantial benefit of each class member.

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

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

GENERAL ALLEGATIONS

24. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

25. Plaintiff was employed in a non-exempt position by Defendants.

26. Defendants continues to employ non-exempt employees throughout California.

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

28. Plaintiff is informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all

1 hours worked and that they were not receiving all wages earned for work that was required to
2 be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
3 Members were not paid wages (including minimum wages and overtime wages) when
4 Defendants required Plaintiff and Class Members to work off-the-clock, for example, during
5 meal periods.

6 29. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
7 provide Plaintiff and Class Members timely, uninterrupted, off-duty meal periods of no less
8 than thirty minutes for each period of five hours worked. Plaintiff and Class Members would
9 also often be required to work through meal periods or would be otherwise interrupted during
10 their meal period. Further, Defendants required Plaintiff and, on information and belief, other
11 Class Members to sign purported meal period waivers at the beginning of their employment.
12 These waivers, however, are invalid because Defendants did not sign said waivers, they were
13 not signed voluntarily, and signing was a condition of employment. See *Faulkinbury v. Boyd*
14 & *Associates, Inc.* (2013) 216 Cal. App. 4th 220, 234. These policies, among others, have
15 resulted in a denial of these employees' rights to 30-minute meal periods in violation of
16 California law.

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

24 31. Upon information and belief, Defendants failed to provide Plaintiff and Class
25 Members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
26 four hours worked, or every major fraction thereof. Defendants also routinely failed to
27 provide Plaintiff and Class Members with a second rest period for shifts lasting longer than
28 six hours, or a third rest period for shifts lasting longer than ten hours. These policies, among

1 others, have resulted in a denial of these employees' rights to a ten-minute rest period in
2 violation of California law.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
4 or should have known that Plaintiff and Class Members were entitled to receive all rest breaks
5 or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate of
6 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
7 Plaintiff and Class Members did not receive all rest breaks or payment of one (1) additional
8 hour of pay at Plaintiff and Class Members' regular rate of pay when a rest break was missed.

9 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
10 or should have known that Plaintiff and Class Members were entitled to receive itemized wage
11 statements that accurately showed their gross and net wages earned, inclusive dates of pay
12 periods, total hours worked, and all applicable hourly rates in effect and the number of hours
13 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
14 Plaintiff and Class Members were not provided with accurate itemized wage statements.

15 34. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
16 should have known that they had a duty to indemnify Plaintiff and Class Members for all
17 necessary expenditures or losses incurred in the discharge of their duties, including, for
18 example, Plaintiff and Class Members cellular phone and home-internet expenses as it related
19 to their employment. In violation of the Labor Code, Defendants did not indemnify Plaintiff
20 and Class Members for the necessary expenses they incurred in the discharge of their duties.

21 35. Plaintiff is informed and believe, and thereon alleges, that Defendants failed
22 to provide Plaintiff and other aggrieved employees with all required sick leave under the
23 Labor Code.

24 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
25 or should have known they had a duty to compensate Plaintiff and Class Members, and
26 Defendants had the financial ability to pay such compensation but willfully, knowingly and
27 intentionally failed to do so all in order to increase Defendants' profits.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Cal. Labor Code §§ 1194, 1194.2, and 1197;**

4 **Violation of IWC Wage Order)**

5 **(By Plaintiff and the California Labor Class against Defendants)**

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

8 38. Cal. Labor Code Sections 1194 and 1197 provide that the minimum wage for
9 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment
10 of a lesser wage than the minimum so fixed is unlawful.

11 39. During the relevant time period, Defendants paid Plaintiff and Class Members
12 less than minimum wages when Defendants required Plaintiff and Class Members to work
13 off-the-clock.

14 40. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wages to Plaintiff and Class Members for all hours worked pursuant to Cal. Labor
16 Code Sections 1194 and 1197.

17 41. Defendants' failure to pay Plaintiff and Class Members the required minimum
18 wages violate Labor Code 1194 and 1197. Pursuant to these sections, Plaintiff and Class
19 Members are entitled to recover the unpaid balance of their minimum wage compensation as
20 well as interest, costs and attorneys' fees.

21 42. Pursuant to Labor Code Section 1194.2, Plaintiff and Class Members are
22 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
23 interest thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME WAGES**

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

27 **(By Plaintiff and the California Labor Class against Defendants)**

28 43. Cal. Labor Code Section 1198 and the applicable IWC Wage Order provide

1 that it is unlawful to employ persons without compensating them at a rate of pay either one
2 and one-half or two times the person's regular rate of pay, depending on the number of hours
3 worked by the person on a daily or weekly basis.

4 44. Pursuant to Cal. Labor Code Sections 510 and 1194, during the relevant time
5 period, Defendants were required to compensate Plaintiff and Class Members for all overtime
6 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
7 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
8 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
9 the seventh day of any work week, or after twelve (12) hours in any work day.

10 45. Plaintiff and Class Members were non-exempt employees entitled to the
11 protections of Cal. Labor Code Section 510 and 1194.

12 46. During the relevant time period, Defendants failed to pay Plaintiff and Class
13 Members overtime and doubletime wages when Defendants required Plaintiff and Class
14 Members to work off-the-clock, for example, during meal periods. As Plaintiff and Class
15 Members worked shifts of eight hours or more, this unpaid time qualified for overtime
16 premium payment.

17 47. In violation of state law, Defendants have knowingly and willfully refused to
18 perform their obligations and compensate Plaintiff and Class Members for all wages earned
19 as alleged above.

20 48. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
21 overtime compensation, as required by California law, violates the provisions of Cal. Labor
22 Code Sections 510 and 1198, and is therefore unlawful.

23 49. Pursuant to Labor Code Section 1194, Plaintiff and Class Members are entitled
24 to recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

4 **(By Plaintiff and the California Labor Class against Defendants)**

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

7 51. Cal. Labor Code Section 226.7 provides that no employer shall require an
8 employee to work during any meal period mandated by the IWC Wage Orders.

9 52. Section 11 of the applicable IWC Wage Order states, “no employer shall
10 employ any person for a work period of more than five (5) hours without a meal period of not
11 less than 30 minutes, except that when a work period of not more than six (6) hours will
12 complete the day’s work the meal period may be waived by mutual consent of the employer
13 and the employee.”

14 53. Cal. Labor Code Section 512(a) provides that an employer may not require,
15 cause or permit an employee to work for a period of more than five (5) hours per day without
16 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
17 except that if the total work period per day of the employee is not more than six (6) hours, the
18 meal period may be waived by mutual consent of both the employer and the employee.

19 54. Labor Code Section 512(a) also provides that an employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the
21 employee with a second meal period of not less than thirty (30) minutes, except that if the
22 total hours worked is no more than twelve (12) hours, the second meal period may be waived
23 by mutual consent of the employer and the employee only if the first meal period was not
24 waived.

25 55. During the relevant time period, Plaintiff and Class Members did not receive
26 compliant meal periods for each five hours worked per day.

27 56. Cal. Labor Code Section 226.7(b) and section 11 of the applicable IWC Wage
28 Order require an employer to pay an employee one additional hour of pay for each workday

1 that a meal period is not provided.

2 57. At all relevant times, Defendants often failed to pay Plaintiff and Class
3 Members meal period premiums for meal period violations, at the regular rate of pay including
4 all non-discretionary bonuses, pursuant to Labor Code Section 226.7(b) and section 11 of the
5 applicable IWC Wage Order.

6 58. As a result of Defendants' failure to pay Plaintiff and Class Members an
7 additional hour of pay for each day a meal period was not provided, Plaintiff and Class
8 Members suffered and continue to suffer a loss of wages and compensation.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PERMIT REST BREAKS**

11 **(Violation of Cal. Labor Code §§ 226.7; Violation of IWC Wage Order)**

12 **(By Plaintiff and the California Labor Class against Defendants)**

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

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

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

22 62. During the relevant time period, Plaintiff and Class Members did not receive
23 a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.
24 Defendants routinely failed to provide Plaintiff and Class Members with a second rest period
25 for shifts lasting eight hours or longer, or a third rest period for shifts lasting twelve hours or
26 longer.

27 63. Labor Code Section 226.7(b) and section 12 of the applicable IWC Wage
28 Order requires an employer to pay an employee one additional hour of pay at the employee's

1 regular rate of compensation for each workday that the rest period is not provided.

2 64. At all relevant times, Defendants failed to pay Plaintiff and Class Members all
3 rest period premiums at their regular rate of compensation, including all non-discretionary
4 bonuses, due for rest period violations pursuant to Labor Code Section 226.7(b) and section
5 12 of the applicable IWC Wage Order.

6 65. As a result of Defendants' failure to pay Plaintiff and Class Members an
7 additional hour of pay for each day a rest period was not provided, Plaintiff and Class
8 Members suffered and continue to suffer a loss of wages and compensation.

9 **FIFTH CAUSE OF ACTION**

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

11 **(Violation of Cal. Labor Code § 226; Violation of IWC Wage Order)**

12 **(By Plaintiff and the California Labor Class against Defendants)**

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

15 67. Cal. Labor Code Section 226(a) requires Defendants to provide each
16 employee with an accurate wage statement in writing showing nine pieces of information,
17 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number
18 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
19 rate basis, (4) all deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
21 dates of the period for which the employee is paid, (7) the name of the employee and the
22 last four digits of his or her social security number or an employee identification number
23 other than a social security number, (8) the name and address of the legal entity that is the
24 employer, and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

26 68. During the relevant time period, Defendants have knowingly and
27 intentionally failed to comply with Cal. Labor Code Section 226(a) on wage statements that
28 were provided to Plaintiff and Class Members. The deficiencies include, among other

1 things, the failure to correctly state the gross and net wages earned, accurate inclusive dates
2 of the pay period, and all applicable hourly rates in effect and the number of hours worked
3 at each hourly rate by Plaintiff and Class Members.

4 69. As a result of Defendants' violation of Cal. Labor Code Section 226(a),
5 Plaintiff and Class Members have suffered injury and damage to their statutorily protected
6 rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
7 intentional violation of California Labor Code Section 226(a) because they were denied
8 both their legal right to receive, and their protected interest in receiving, accurate itemized
9 wage statements under California Labor Code Section 226(a). Plaintiff has had to file this
10 lawsuit in order to determine the extent of the underpayment of wages, thereby causing
11 Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these
12 efforts and incur these costs had Defendants provided the accurate wages earned. This has
13 also delayed Plaintiff's ability to demand and recover the underpayment of wages from
14 Defendants.

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

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

26 72. Plaintiff and Class Members are also entitled to injunctive relief under
27 California Labor Code Section 226(h), compelling Defendants to comply with California
28 Labor Code Section 226 and seek the recovery of attorneys' fees and costs incurred in

1 obtaining this injunctive relief.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

4 **(Violation of Cal. Labor Code §§ 2800, 2802)**

5 **(By Plaintiff and the California Labor Class against Defendants)**

6 73. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
7 though fully set forth herein.

8 74. Cal. Labor Code Section 2800 provides, in pertinent part, “[a]n employer shall
9 in all cases indemnify his employee for losses caused by the employer’s want of ordinary
10 care.”

11 75. Cal. Labor Code Section 2802 provides, in pertinent part, “[a]n employer shall
12 indemnify his or her employee for all necessary expenditures or losses incurred by the
13 employee in direct consequence of the discharge of his or her duties...”

14 76. Further, Labor Code Section 2802 additionally provides, in pertinent part:
15 “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including
16 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by
17 this section.”

18 77. During the relevant time period, Defendants required Plaintiff and Class
19 Members to use their own cellular phones and home-internet in the discharge of their duties
20 but were not reasonably compensated for these expenses.

21 78. During the relevant time period, Defendants were required to indemnify and
22 reimburse Plaintiff and Class Members for all expenditures or losses caused by the employer’s
23 want of ordinary care and/or incurred in direct consequent of the discharge of their duties but
24 failed to indemnify and reimburse Plaintiff and Class Members in violation of Labor Codes
25 Sections 2800 and 2802.

26 79. As a direct and proximate result, Plaintiff and Class Members have suffered,
27 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
28 be reimbursed, lost interest on such monies, and expenses and attorney’s fees in seeking to

1 compel Defendants to fully perform their obligations under California law, all to their damage
2 in amounts according to proof at the time of trial.

3 **SEVENTH CAUSE OF ACTION**

4 **(VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200,**

5 **ET SEQ.)**

6 **(By Plaintiff and the California Labor Class against Defendants)**

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

9 81. Defendants' conduct, as alleged herein, has been and continues to be unfair,
10 unlawful and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important
11 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

12 82. Defendants' activities, as alleged herein, violates California law and constitute
13 unlawful business acts or practices in violation of California Business and Professions Code
14 Sections 17200, *et seq.*

15 83. A violation of Cal. Business and Professions Code §§ 17200, *et seq.* may be
16 predicated on the violation of any state or federal law.

17 84. Defendants' policies and practices have violated state law in at least the
18 following respects:

19 (a) Failing to pay all minimum wages to Plaintiff and Class Members in violation
20 of Labor Code §§ 1194, 1194.2, and 1197;

21 (b) Failing to pay all overtime wages to Plaintiff and Class Members in violation
22 of Labor Code §§ 510, 1194 and 1198;

23 (c) Failing to provide timely meal periods without paying Plaintiff and Class
24 Members premium wages for every day said meal periods were not provided in violation of
25 Labor Code §§ 226.7 and 512;

26 (d) Failing to authorize or permit rest breaks without paying Plaintiff and Class
27 Members premium wages for every day said rest breaks were not authorized or permitted in
28 violation of Labor Code § 226.7;

1 (e) Failing to provide accurate, itemized wage statements in violation of Labor
2 Code § 226;

3 (f) Failing to reimburse Plaintiff and Class Members for all business expenses
4 incurred in violation of Labor Code §§ 2800 and 2802.

5 85. Defendants intentionally avoided paying Plaintiff and Class Members' wages
6 and monies, thereby creating for Defendants an artificially lower cost of doing business in
7 order to undercut their competitors and establish and gain a greater foothold in the
8 marketplace.

9 86. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and
10 Class Members are entitled to restitution of the wages unlawfully withheld and retained by
11 Defendants during a period that commences four years prior to the filing of the Complaint; an
12 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
13 laws; and an award of costs.

14 **EIGHTH CAUSE OF ACTION**

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

16 87. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above
17 as though fully set forth herein.

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

24 89. Defendants' conduct violates numerous Labor Code sections including, but
25 not limited to, the following:

26 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558, 1182.12,
27 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages,
28

1 regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
2 employment and upon separation of employment as herein alleged;

3 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
4 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed
5 meal periods as herein alleged;

6 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
7 and other aggrieved employees and failure to pay premium wages for missed rest periods as
8 herein alleged;

9 (d) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
10 and necessary business expenses of Plaintiff and other aggrieved employees as herein
11 alleged;

12 (e) Violation of Labor Code § 226 for failure to provide accurate, itemized wage
13 statements; and

14 90. Plaintiff is an “aggrieved employee” because he was employed by the alleged
15 violator and had one or more of the alleged violations committed against them, and therefore
16 is properly suited to represent the interests of all other aggrieved employees.

17 91. Plaintiff has exhausted the procedural requirements under Labor Code §
18 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
19 himself and all other aggrieved employees under PAGA.

20 92. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
21 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
22 aggrieved employee per pay period for each subsequent violation.

23 93. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff are entitled
24 to recover civil penalties, in addition to other remedies, for violations of the Labor Code
25 sections cited above.

26 94. For bringing this action, Plaintiff is entitled to attorney’s fees and costs
27 incurred herein.

28 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
3 and judgment against Defendants, jointly and severally, as follows:

4 1. For certification of this action as a class action, including certifying the
5 California Labor Class alleged by Plaintiff;

6 2. For appointment of Heather De Vries as the class representative;

7 3. For appointment of Lebe Law, APLC as class counsel for all purposes;

8 4. For compensatory damages in an amount according to proof with interest
9 thereon;

10 5. For economic and/or special damages in an amount according to proof with
11 interest thereon;

12 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
13 by law, including pursuant to California Code of Civil Procedure § 1021.5 and Labor Code §
14 1194;

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

17 8. For restitution as provided by Business and Professions Code §§ 17200, *et*
18 *seq.*;sic

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

23 10. For an award of damages in the amount of unpaid compensation including, but
24 not limited to, unpaid wages, benefits and penalties, including interest thereon;

25 11. For injunctive relief;

26 12. For pre-judgment interest; and

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

DATED: February 8, 2021

Lebe Law, APLC

By: 
Jonathan M. Lebe


Attorney for Plaintiff Heather De Vries,
Individually and on behalf of all others
similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: February 8 2021

Lebe Law, APLC

By: 
Jonathan M. Lebe

Attorney for Plaintiff Heather De Vries,
Individually and on behalf of all others
similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age of
3 eighteen years and not a party to the within entitled action; my business address is 777 S.
4 Alameda Street, Los Angeles, CA 90021.

5 On February 8, 2022 I served the foregoing Second Amended Class and Representative
6 Action Complaint, on the interested parties, by the method of service indicated specific
7 below:

8 Barbara Blackburn
9 BBlackburn@littler.com
10 Nate Jenkins
11 NJenkins@littler.com
12 **LITTLER MENDELSON, P.C.**
13 500 Capitol Mall, Suite 2000
14 Sacramento, CA 95814

15 JOSEPH R. LORDAN
16 Joseph.Lordan@lewisbrisbois.com
17 VINCENT R. FISHER
18 Vincent.Fisher@lewisbrisbois.com
19 JOHANNA C. TEMPLETON
20 Johanna.Templeton@lewisbrisbois.com
21 **LEWIS BRISBOIS BISGAARD &**
22 **SMITH LLP**
23 333 Bush Street, Suite 1100
24 San Francisco, California 94104-2872

- 25 (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to
26 accept service by electronic transmission, I caused the documents to be sent to the
27 persons at the electronic notification addresses listed above. I did not receive, within a
28 reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.
- (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

29 Dated: February 8, 2022

30 
31 _____
32 Zachary T. Gershman