

1 Todd L Nunn, SBN 320687
todd.nunn@klgates.com
2 Kate G. Hummel SBN 305783
kate.hummel@klgates.com
3 **K&L GATES LLP**
10100 Santa Monica Boulevard
4 Eighth Floor
Los Angeles, California 90067
5 Telephone: 310.552.5000
Facsimile: 310.552.5001

6
7 Attorneys for Defendants Expedia, Inc., and
Expedia Group, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 SASHA BALABANOFF, on behalf of herself and
12 others similarly situated,

13 Plaintiff,

14 vs.

15 CLASSIC VACATIONS, LLC, a Nevada limited
16 liability company; EXPEDIA, INC., a Washington
17 corporation; EXPEDIA GROUP, an entity of
unknown form; CLASSIC CUSTOM
DOES 1 through 50, inclusive,

18 Defendants.
19

Case No.: 5:21-cv-8362

**NOTICE OF REMOVAL UNDER 28 U.S.C.
§ 1332(d) - CLASS ACTION FAIRNESS
ACT**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 TO: Clerk, United States District Court for the Northern District of California;

3 AND TO: Plaintiff Sasha Balabanoff;

4 AND TO: David Yeremian and Roman Shkodnik of David Yeremian &
5 Associates, Inc.

6 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441, and
7 1446, Defendants Expedia, Inc. and Expedia Group (together “Expedia”) hereby
8 remove this action, originally filed in the California Superior Court in the County
9 of Santa Clara, (Case No. 21CV386966) (the “State Court Action”), to the United
10 States District Court for the Northern District of California. In support of this
11 removal, Expedia states as follows:

12 1. As set forth below, the case is properly removed to this Court under
13 28 U.S.C. § 1441 because the Court has jurisdiction over this action under the
14 Class Action Fairness Act, 28 U.S.C. § 1332(d), in that this matter is a civil action
15 in which the amount in controversy exceeds the sum of \$5,000,000 exclusive of
16 costs and interest, there are more than 100 members in the putative class, and is
17 between citizens of different states.

18 2. By filing this Notice of Removal, Expedia does not intend to waive,
19 and hereby reserves, any objection as to venue, the legal sufficiency of the claims
20 alleged in the State Court Action and all other defenses. Expedia reserves the right
21 to supplement and amend this Notice of Removal.

22 **Commencement and Pendency of Action in State Court.**

23 3. Plaintiff Sasha Balabanoff (“Plaintiff”) filed a Class Action Complaint
24 for Damages in Santa Clara County Superior Court, Case No. 21CV386966, against
25 Expedia and other defendants on September 23, 2021 (the “Complaint”). Expedia was
26 served in the State Court Action with a copy of the Summons and Complaint by
27 personal service on its registered agent on September 27, 2021. As such, service was
28

1 completed on September 27, 2021 at the time of personal delivery. Cal. Code. Civ.
2 Proc. § 415.10.

3 4. A true and correct copy of the Complaint filed in the State Court Action
4 is attached hereto as Exhibit A. A true and correct copy of the Summons filed in the
5 State Court Action is attached hereto as Exhibit B. A true and correct copy of the
6 National Registered Agents, Inc. Service of Process Summary Transmittal Form is
7 attached hereto as Exhibit C. A true and correct copy of the Civil Lawsuit Notice
8 filed in the State Court Action is attached hereto as Exhibit D. A true and correct
9 copy of the Civil Case Cover Sheet filed in the State Court Action is attached hereto
10 as Exhibit E. These materials comprise of “all process, pleadings and orders served”
11 upon Expedia in the State Court Action. *See* U.S.C. § 1446(a).

12 5. In the Complaint, Plaintiff seeks to certify a proposed class defined as
13 “all individuals employed by Defendants, at any time within four (4) years of the
14 filing of this lawsuit, and have been employed by Defendants within the state of
15 California.” (*See* Ex. A (Complaint) ¶ 31.) The Complaint asserts twelve causes of
16 action against Defendants on behalf of Plaintiff and the putative class, including:
17 Failure to Pay Minimum Wages; Failure to Pay Wages and Overtime Under Labor
18 Code § 510; Meal-Period Liability Under Labor Code § 226.7; Rest-Break Liability
19 Under Labor Code § 226.7; Failure to Pay Vacation Wages; Failure to Comply with
20 Labor Code § 245 and § 246; Reimbursement of Necessary Expenditures Under Labor
21 Code § 2802; Failure to Comply with Labor Code § 2751; Violation of Labor Code
22 §226(a); Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
23 1174.5; Penalties Pursuant to Labor Code § 203; Violation of business & Professions
24 Code § 17200. (*See* Ex. A (Complaint) ¶ 42-111.)

25 **Basis for Removal**

26 6. The Class Action Fairness Act (“CAFA”) creates federal jurisdiction
27 over lawsuits in which “the matter in controversy exceeds the sum or value of
28 \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any

1 member of a class of plaintiffs is a citizen of a State different from any defendant,”
2 and involves a putative class that consists of more than 100 members. 28 U.S.C. §§
3 1332(d)(2)(A) and (d)(5). Each of these three requirements is met.

4 **Diversity of Citizenship**

5 7. 28 U.S.C. § 1332(d)(2)(A) requires that “any member of a class of
6 plaintiffs is a citizen of a State different from any defendant.” For purposes of this
7 section, a corporation is “deemed to be a citizen of every State and foreign state by
8 which it has been incorporated and of the State or foreign state where it has its
9 principal place of business.” *See* 28 U.S.C. § 1332(c)(1).

10 8. When this action was commenced and at the time of this Notice of
11 Removal, Plaintiff was and is a citizen and resident of the State of California. (*See* Ex.
12 A (Complaint) ¶ 4.)

13 9. Defendant Expedia Group, Inc. is a Delaware corporation. Its principal
14 place of business is Seattle, Washington.

15 10. Defendant Expedia, Inc. is a Washington corporation. Its principal place
16 of business is Seattle, Washington.

17 11. Because Plaintiff is a citizen of a different state than at least one
18 Defendant, the diversity requirement set forth in 28 U.S.C. § 1332(d)(2) is satisfied.

19 **The Putative Class Exceeds 100 Members**

20 12. As noted above and according to the Complaint, the putative class
21 includes “all individuals employed by Defendants, at any time within four (4) years of
22 the filing of this lawsuit, and have been employed by Defendants within the state of
23 California.” (*See* Ex. A (Complaint) ¶ 31.)

24 13. Records to which Expedia has access show that the number of putative
25 class members (non-exempt employees of Defendant Classic Vacations LLC in
26 California) exceeds 100. As such, the putative class size requirement set forth in 28
27 U.S.C. § 1332(d)(5) is satisfied.

28

The Amount in Controversy Exceeds \$5,000,000

14. Although the Complaint does not set forth the dollar amount prayed for, and Expedia denies all liability alleged in the Complaint, if Plaintiff’s claims were substantiated and completely successful, the aggregate amount in dispute would exceed \$5,000,000.

15. Plaintiff alleges twelve causes of action on a class basis during the putative class period, which include:

- a. Failure to Pay Minimum Wages;
- b. Failure to Pay Wages and Overtime Under Labor Code § 510;
- c. Meal-Period Liability Under Labor Code § 226.7;
- d. Rest-Break Liability Under Labor Code § 226.7;
- e. Failure to Pay Vacation Wages;
- f. Failure to Comply with Labor Code § 245 and § 246;
- g. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
- h. Failure to Comply with Labor Code § 2751;
- i. Violation of Labor Code §226(a);
- j. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
- k. Penalties Pursuant to Labor Code § 203;
- l. Violation of business & Professions Code § 17200.

(See generally Ex. A (Complaint).)

16. Based on reasonable assumptions, the amount in controversy in this case for just a portion of these claims exceeds \$5,000,000.

17. Plaintiff’s First Cause of Action alleges that “Defendants had a consistent policy or practice of failing to pay Employees for all hours worked, and failing to pay minimum wage for all time worked as required by California Law.” (See Ex. A (Complaint) ¶¶ 19, 43.) During the four years preceding the filing of the Complaint, and for which Expedia has access to data, Defendant Classic Vacations LLC had at

1 least 171 nonexempt hourly employees who worked a total of 21,250 workweeks, and
2 who collectively earned an average rate (which would differ between individuals) of
3 \$19.43 per hour. Although the Complaint uses language suggesting Plaintiff is
4 alleging a more frequent violation rate for failure to pay minimum wage, the following
5 amount in controversy is calculated by reasonably assuming two hours of unpaid
6 minimum wage per week per employee: $\$19.43$ (average hourly rate) \times 2 (unpaid
7 regular hours per week) \times 21,250 (workweeks during the alleged class period based on
8 data to which Expedia has access) = $\$825,775$). Expedia reasonably alleges that the
9 amount in controversy for Plaintiff's First Cause of Action is $\$825,775$.

10 18. Plaintiff's Second Cause of Action alleges that "Defendants had a
11 consistent policy or practice of failing to pay Employees overtime compensation at
12 premium overtime rates for all hours worked in excess of eight (8) hours a day and/or
13 forty (40) hours a week, and double-time rates for all hours worked in excess of
14 twelve (12) hours a day." (*See* Ex. A (Complaint) ¶¶ 20, 52.) Defendant Classic
15 Vacations LLC had at least 171 nonexempt hourly employees who worked a total of
16 21,250 workweeks, and who collectively earned an average rate (which would differ
17 between individuals) of $\$19.43$ per hour. The overtime rate of 1.5 for this average
18 hourly rates is: $\$29.15$. Although the Complaint uses language suggesting Plaintiff is
19 alleging a more frequent violation rate for failure to pay overtime wages, the
20 following amount in controversy is calculated by reasonably assuming two hours of
21 unpaid overtime per week per employee: $\$29.15$ (average overtime rate) \times 2 (unpaid
22 overtime hours per week) \times 21,250 (workweeks during the alleged class period based
23 on data to which Expedia has access) = $\$1,238,875$). Expedia reasonably alleges that
24 the amount in controversy for Plaintiff's Second Cause of Action is $\$1,238,875$.

25 19. Plaintiff's Third Cause of Action alleges that "Defendants have regularly
26 required Employees to work shifts in excess of five (5) hours without providing them
27 with uninterrupted meal periods of not less than thirty (30) minutes and shifts in
28 excess of ten (10) hours without providing them with second meal periods of not less

1 than thirty minutes; nor did Defendants pay Employees ‘premium pay,’” and
2 “Employees were consistently required to work through their meal periods which they
3 were consistently denied.” (See Ex. A (Complaint) ¶¶ 21, 60.) Thus, Plaintiff seeks
4 one hour of premium pay for each meal break the putative class member allegedly
5 missed. (See Ex. (Complaint) ¶ 62.) Although the Complaint uses language suggesting
6 Plaintiff is alleging a more frequent meal period violation rate, the following amount
7 in controversy is calculated by reasonably assuming two meal period violations per
8 work week per employee: $(\$19.43 \text{ (average hourly rate)} \times 2 \text{ (meal period violations}$
9 $\text{per week)} \times 21,250 \text{ (workweeks during the alleged class period based on data to}$
10 $\text{which Expedia has access)} = \$825,775$). Expedia reasonably alleges that the amount
11 in controversy for Plaintiff’s Third Cause of Action is \$825,775.

12 20. Plaintiff’s Fourth Cause of Action alleges that “Defendants have
13 consistently failed to provide Employees with paid rest breaks of not less than ten (10)
14 minutes for every work period of four (4) or more consecutive hours; nor did
15 Defendant pay Employees premium pay for each day on which requisite rest breaks
16 were not provided or were deficiently provided.” (See Ex. A (Complaint) ¶¶ 22, 65.)
17 Thus, Plaintiff seeks one hour of premium pay for each rest break the putative class
18 member allegedly missed. (See Ex. A (Complaint) ¶ 67.) Although the Complaint uses
19 language suggesting Plaintiff is alleging a more frequent rest break violation rate, the
20 following amount in controversy is calculated by reasonably assuming two rest break
21 violations per workweek per employee: $(\$19.43 \text{ (average hourly rate)} \times 2 \text{ (rest break}$
22 $\text{violations per week)} \times 21,250 \text{ (workweeks during the alleged class period based on}$
23 $\text{data to which Expedia has access)} = \$825,775$). Expedia reasonably alleges that the
24 amount in controversy for Plaintiff’s Fourth Cause of Action is \$825,775.

25 21. Plaintiff’s Ninth Cause of Action alleges that “Defendants failed to
26 provide Employees with accurate itemized wage statements in writing, as required by
27 the Labor Code.” (See Ex. A (Complaint) ¶ 88.) Thus, Plaintiff seeks fifty dollars per
28 employee for the initial pay period in which a violation occurs and one hundred

1 dollars per employee for each violation in a subsequent pay period for a one year
2 period prior to the Complaint, not exceeding an aggregate penalty of four thousand
3 dollars per employee. (*See* Ex. A (Complaint) ¶ 90.) The Complaint uses absolute
4 terms indicating Plaintiff is alleging a 100% violation rate, and such a violation rate is
5 consistent with Plaintiff's other allegations of multiple violations relating to claims for
6 off-the-clock, overtime, meal period and rest break requirements. The following
7 amount in controversy is calculated by assuming a noncompliant wage statement was
8 issued each pay period for the relevant one year period: ($[171 \text{ (employees)} \times \50
9 $\text{ (initial violation penalty)} \times 1 \text{ (representing initial violation for each employee)}]$ +
10 $[\$100 \text{ (second violation penalty)} \times 1,500 \text{ (pay periods during period based on data to}$
11 $\text{ which Expedia has access)}]$ = \$158,000). Expedia reasonably alleges that the amount
12 in controversy for Plaintiff's Ninth Cause of Action is \$158,000.

13 22. Plaintiff's Eleventh Cause of Action alleges that "Numerous Employees
14 are no longer employed by Defendants; they either quit Defendants' employ or were
15 fired therefrom" and "Defendants failed to pay these Employees all wages due and
16 certain at the time of termination or within seventy-two (72) hours of resignation."
17 (*See* Ex. A (Complaint) ¶¶ 98-99.) Thus, Plaintiff seeks a penalty equal to a day's
18 wages, for thirty (30) days, plus interest, for each employee who separated from
19 employment. (*See* Ex. A (Complaint) ¶ 101.) The Complaint uses absolute terms
20 suggesting Plaintiff is alleging a 100% violation rate so the following amount in
21 controversy is calculated by assuming that rate: ($65 \text{ former employees} \times \19.43
22 $\text{ (average hourly rate)} \times 8 \text{ (hours per day)} \times 30 \text{ (maximum days for penalty)} =$
23 $\$303,108$). Expedia reasonably alleges that the amount in controversy for Plaintiff's
24 Eleventh Cause of Action is \$303,108.

25 23. Expedia can assume an attorney fee amount of 25% of the total amount
26 claimed by Plaintiff (\$4,177,308) in the amount of: \$1,044,327.

27 24. Calculating the amount in controversy for only six of Plaintiff's twelve
28 causes of action, using reasonable assumptions if (i) the alleged violations occurred

1 “consistently” and “regularly” as alleged in the Complaint and (ii) the claims were
2 entirely successful (which Defendants will contest), yields an amount in controversy
3 of \$5,221,635, which exceeds CAFA’s amount in controversy requirement. If
4 necessary, Expedia could allege additional amounts in controversy for Plaintiff’s
5 remaining claims.

6 25. Additionally, Expedia does not have access to all of the data for Classic
7 Vacation LLC employees. Expedia is removing this case based on only the data to
8 which it has access and thus only accounts for a part of the potential amount in
9 controversy. Expedia alleges that there is additional data supporting additional
10 amounts in controversy in the control of Classic Vacation LLC.

11 26. Under CAFA, “the claims of all members of a putative class shall be
12 aggregated” to determine the amount in controversy. *See* 28 U.S.C. § 1332(d)(6).
13 Given that the Complaint seeks the above-described damages, exemplary damages,
14 attorney’s fees, and other relief, the matter in controversy exceeds the sum or value of
15 \$5,000,000, exclusive of interest and costs, and therefore satisfies the jurisdictional
16 minimum set forth in 28 U.S.C. § 1332(d)(2).

17 **This Notice of Removal is Timely Filed**

18 27. Notice of removal must generally be filed “within 30 days after the
19 receipt by the defendant, through service or otherwise, of a copy of the initial pleading
20 setting forth the claim for relief upon which such action or proceeding is based, or
21 within 30 days after the service of summons upon the defendant if such initial
22 pleading has then been filed in court and is not required to be served on the defendant,
23 whichever period is shorter.” *See* 28 U.S.C. §§ 1446(b)(1) and 1453(b).

24 28. Expedia was served in the State Court Action with a copy of the
25 Summons and Complaint by personal service on its registered agent on September 27,
26 2021. (*See* Ex. C.) As such, service was completed on September 27, 2021 at the
27 time of personal delivery. Cal. Code. Civ. Proc. § 415.10. This Notice of Removal is
28 being filed within 30 days of that date.

1 **The Removal Venue Is Proper**

2 29. Removal is properly made to the United States District Court for the
3 Northern District of California under 28 U.S.C. 1441(b), because the Superior Court
4 for the State of California, County of Santa Clara, where the State Court Action is
5 currently pending, is within the Northern District of California.

6 **Notice to Plaintiff and State Court**

7 30. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is
8 being promptly served upon counsel for Plaintiff and a copy is being filed with the
9 Clerk of the Superior Court of the State of California, County of Santa Clara.

10 WHEREFORE, Expedia respectfully requests removal of the State Court
11 Action from the Superior Court of the State of California, County of Santa Clara, to
12 the United States District Court for the Northern District of California.

13
14 K&L GATES LLP

15
16 Dated: October 27, 2021

17 By: /s/ Kate G. Hummel

18 Todd L Nunn
todd.nunn@klgates.com
Kate G. Hummel
kate.hummel@klgates.com

19 Attorneys for Defendants Expedia, Inc.
20 and Expedia Group, Inc.

Exhibit A

E-FILED
9/23/2021 10:42 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV386966
Reviewed By: R. Walker

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
3 roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 Attorneys for Plaintiff SASHA BALABANOFF,
7 on behalf of herself and others similarly situated

8 [Additional counsel listed on following page]

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA

12 SASHA BALABANOFF, on behalf of herself
and others similarly situated,

13 Plaintiff,

14 vs.

15 CLASSIC VACATIONS, LLC, a Nevada
limited liability company; EXPEDIA, INC., a
16 Washington corporation; EXPEDIA GROUP,
an entity of unknown form; CLASSIC
17 CUSTOM VACATIONS, an entity of
unknown form; and DOES 1 through 50,
18 inclusive,

19 Defendants.
20

Case No. **21CV386966**

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime,
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 et seq. and 246
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Failure to Comply with Labor Code § 2751;
9. Violation of Labor Code § 226(a);
10. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5
11. Penalties Pursuant to Labor Code § 203;
12. Violation of Business & Professions Code § 17200 et seq.

DEMAND FOR JURY TRIAL

1 DAVTYAN LAW FIRM, INC.
Emil Davtyan (SBN 299363)
2 emil@davtyanlaw.com
880 E Broadway
3 Glendale, CA 91205
Telephone: (818) 875-2008
4 Facsimile: (818) 722-3974

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiff SASHA BALABANOFF, (hereinafter “Plaintiff”) on behalf of herself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants CLASSIC
8 VACATIONS, LLC, a Nevada limited liability company, EXPEDIA, INC., a Washington
9 corporation, EXPEDIA GROUP, an entity of unknown form, CLASSIC CUSTOM VACATIONS,
10 an entity of unknown form, and DOES 1 through 50 (all defendants being collectively referred to
11 herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
12 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
13 (IWC) and California Business & Professions Code, and seeks redress therefore.

14 2. Plaintiff is a resident of California and during the time period relevant to this
15 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
16 California at Defendants’ facilities and offices in San Jose, California. Plaintiff and the other Class
17 members worked for Defendants in Santa Clara County, and in other nonexempt positions,
18 throughout California and, and consistently worked at Defendants’ behest without being paid all
19 wages due. More specifically, Plaintiff and the other similarly situated Class members were
20 employed by Defendants and worked at Defendants’ offices and other facilities where the conduct
21 giving rise to the allegations in this Class Action Complaint occurred. Upon information and
22 belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities,
23 (2) was subjected to the same policies and practices, and (3) endured similar violations at the
24 hands of Defendants as the other Employee Class members who served in similar and related
25 positions.

26 3. Defendants required Plaintiff and the Employees in the Class to perform work
27 while remaining under Defendants’ control before and after being on the clock for their daily work
28 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and

1 provided them with inaccurate wage statements that prevented Plaintiff and the Class from
2 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
3 with lawful meal and rest periods, as employees were not provided with the opportunity to take
4 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

5 **THE PARTIES**

6 **A. The Plaintiff**

7 4. Plaintiff SASHA BALABANOFF has resided in California and during the time
8 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee
9 within the State of California at Defendants' facilities and offices in San Jose, California.

10 **B. The Defendants**

11 5. Defendant CLASSIC VACATIONS, LLC ("CV") is a Nevada limited liability
12 corporation with its principle executive office in San Jose, California, and has been listed as the
13 employer on the wage statements issued to Plaintiff during the relevant time period. CV lists a
14 California address in San Jose, California with the California Secretary of State, and employs
15 Plaintiff and the Class members in Santa Clara County, including at Defendants' offices and
16 facilities in San Jose, California, and throughout California and conducts business throughout
17 California.

18 6. Defendant EXPEDIA, INC ("EXPEDIA") is a Washington corporation with its
19 principle executive office in Seattle, Washington, and has been listed as the employer on
20 Plaintiff's personnel file during the relevant time period. EXPEDIA lists a California address in
21 Seattle, Washington with the California Secretary of State, and employs Plaintiff and the Class
22 members in Santa Clara County, including at Defendants' offices and facilities in San Jose,
23 California, and throughout California and conducts business throughout California.

24 7. Defendant EXPEDIA GROUP is an entity of unknown form with its principle
25 executive office in San Jose, California, and has been listed as the employer on Plaintiff's
26 personnel file during the relevant time period. EXPEDIA GROUP does not list a California
27 address with the California Secretary of State, but upon information and belief, employs Plaintiff
28 and the Class Members in Santa Clara County, including at Defendants' offices and facilities in

1 San Jose, California, and throughout California and conducts business throughout California.

2 8. Defendant EXPEDIA GROUP is an entity of unknown form with its principle
3 executive office in San Jose, California, and has been listed as the employer on Plaintiff's
4 personnel file during the relevant time period. EXPEDIA GROUP does not list a California
5 address with the California Secretary of State, but upon information and belief, employs Plaintiff
6 and the Class Members in Santa Clara County, including at Defendants' offices and facilities in
7 San Jose, California, and throughout California and conducts business throughout California.

8 9. Defendant CLASSIC CUSTOM VACATIONS ("CCV") is an entity of unknown
9 form with its principle executive office in San Jose, California, and has been listed as the employer
10 on Plaintiff's personnel file during the relevant time period. CCV does not list a California address
11 with the California Secretary of State, but upon information and belief, employs Plaintiff and the
12 Class Members in Santa Clara County, including at Defendants' offices and facilities in San Jose,
13 California, and throughout California and conducts business throughout California.

14 10. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
16 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
18 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 50 when their identities become known.

22 11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, or suffered or
28 permitted Employees to work, or engaged, thereby creating a common law employment

1 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
2 employed Employees.

3 **JURISDICTION AND VENUE**

4 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
6 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
8 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
9 obligations and liabilities giving rise to this lawsuit occurred at least in part in Santa Clara County
10 and Defendants maintain and operate company offices and facilities in Santa Clara County, and
11 employ Plaintiff and other Class members in Santa Clara County and throughout California.

12 **FACTUAL BACKGROUND**

13 13. The Employees who comprise the Class and Collective, including Plaintiff, are
14 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
15 Employees who work in nonexempt positions at the direction of Defendants in the State of
16 California. Plaintiff and the Class members were either not paid by Defendants for all hours
17 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
18 Plaintiff and Employees were not paid for the time that they worked off-the-clock without
19 compensation by booting up their computers prior to logging into the timekeeping system and
20 working with Defendants' clients before they clocked in and clocked out for the day. Plaintiff also
21 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
22 failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in
23 violation of various provisions of the California Labor Code and applicable Wage Orders.
24 Additionally, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive
25 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
26 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
27 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
28 the overtime wage rate. Therefore, during times when Plaintiffs and Employees worked overtime

1 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
2 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

3 14. From at least four (4) years prior to the filing of this lawsuit and continuing to the
4 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
5 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
6 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
7 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
8 sick pay. Therefore, during times when Plaintiffs and Employees worked overtime and received
9 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
10 to pay all sick pay by paying a lower overtime rate than required.

11 15. From at least four (4) years prior to the filing of this lawsuit and continuing to the
12 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
13 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
14 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
15 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
16 vacation pay. Therefore, during times when Plaintiffs and Employees worked overtime and
17 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
18 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

19 16. During the course of Plaintiff and the Class members' employment with
20 Defendants, they were not paid all wages they were owed, including for all work performed and
21 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
22 labor budgets low.

23 17. As a matter of uniform Company policy, Plaintiff and the Class members were
24 required to work during their meal and rest breaks which were not compensated by Defendants in
25 violation of the California Labor Code. Plaintiff and the Class members were also not paid
26 regular wages and overtime for the time they were required to comply with other requirements
27 imposed upon them, which they had to complete while working through their meal and rest
28 breaks and without compensation. As a result Plaintiff and the Class members worked shifts over

1 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
2 appropriate overtime rate for all such hours, including by being required to perform work duties
3 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
4 worked substantial overtime hours during their employment with Defendants for which they were
5 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

6 18. As a result of the above described the daily work demands and pressures to work
7 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
8 Class members were not properly paid for all wages earned and for all wages owed to them by
9 Defendants, including when working more than eight (8) hours in any given day and/or more than
10 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
11 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
12 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
13 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
14 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
15 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
16 Labor Code, applicable IWC Wage Orders.

17 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay
19 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
20 by California Law.

21 20. Additionally from at least four (4) years prior to the filing of this lawsuit and
22 continuing to the present, Defendants had a consistent policy or practice of failing to pay
23 Employees overtime compensation at premium overtime rates for all hours worked in excess of
24 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
25 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
26 sections of IWC Wage Orders.

27 21. Additionally from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Employees to work shifts in excess

1 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
2 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
3 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
4 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
5 Defendants failed to provide or deficiently provided.

6 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
8 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
9 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
10 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
11 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

12 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
13 continuing to the present, Defendants have consistently failed to provide Employees with timely,
14 accurate, and itemized wage statements as required by California wage-and-hour laws.
15 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
16 correct overtime wages based on proper regular rate calculations that included nondiscretionary
17 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
18 compensation of their Employees. Moreover, the wage statements given to Employees by
19 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
20 periods and rest breaks, and automatically deducted wages for alleged meal periods, all of which
21 Defendants knew or reasonably should have known were owed to Employees, as alleged
22 hereinabove. The wage statements provided to Employees were confusing and required
23 Employees to engage in discovery and refer to outside sources to verify whether their pay was
24 correct and potentially resulting in a miscalculation by the Employees.

25 24. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
26 continuing to the present, Defendants have consistently failed to provide Employees with timely,
27 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

28 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the

1 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
2 performance of their job duties for Defendants including, but not limited to, the cost of cellphone
3 usage which was necessary to perform their duties under Defendants' employ in violation of Labor
4 Code § 2802.

5 26. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants had a consistent and uniform policy, practice and procedure, when entering
7 into contracts of employment with aggrieved employees for services to be rendered within
8 California and the contemplated method of payment involved commissions, of failing to utilize a
9 written contract signed by both the employer and employee setting forth the method by which the
10 commissions shall be computed and paid in violation of Labor Code § 2751.

11 27. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
12 continuing to the present, Defendants have consistently failed to keep accurate time and wage
13 records as required by California wage-and-hour laws.

14 28. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
15 to the present, Defendants have had a consistent policy of failing to pay all wages due and owed to
16 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
17 required by California wage-and-hour laws.

18 29. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
19 Code §§ 201, 202, 203, 204, 226, 226.4, 226.7, 227.3, 245 et seq., 246, 510, 512, 558, 558.1,
20 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1199, 2751, and 2802.

21 30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
22 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
23 enjoyed from their violations of Labor Code.

24 **CLASS ALLEGATIONS**

25 31. Plaintiff brings this class action on behalf of herself and all others similarly situated
26 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
27 all individuals employed by Defendants, at any time within four (4) years of the filing of this
28 lawsuit, and have been employed by Defendants within the State of California.

1 32. Further, plaintiff seeks to represent the following Subclasses composed of and
2 defined as follows:

3 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the applicable minimum wage.

5 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
6 compensated for all hours worked for Defendants at the required rates of pay, including for all
7 hours worked in excess of eight in a day and/or forty in a week.

8 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
9 compensated at the Employee's regular rate of pay for their vacation wages.

10 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at
11 the Employee's regular rate of pay for their sick pay wages.

12 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
14 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

15 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
16 Defendants' policy and/or practice of failing to authorize and permit Employees to take
17 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
18 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

19 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
20 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
21 by California wage-and-hour laws.

22 h. Subclass 8. Commission Subclass. All Class members who, within the applicable
23 limitations period, were not provided with a written contract signed by both the employer and
24 employee setting forth the method by which the commissions shall be computed and paid.

25 i. Subclass 9. Wage Statement Subclass. All Class members who, within the
26 applicable limitations period, were not provided with accurate itemized wage statements.

27 j. Subclass 10. Failure to Reimburse for Necessary Business Expenditures. All Class
28 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in

1 the performance of Employees job duties for Defendants which were necessary to perform their
2 duties under Defendants' employ.

3 k. Subclass 11. Termination Pay Subclass. All Class members who, within the
4 applicable limitations period, either voluntarily or involuntarily separated from their employment
5 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
6 termination.

7 l. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
8 result of Defendants' business acts and practices, to the extent such acts and practices are found to
9 be unlawful, deceptive, and/or unfair.

10 33. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
11 modify the class description with greater particularity or further division into subclasses or
12 limitation to particular issues.

13 34. This action has been brought and may properly be maintained as a class action
14 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
15 of interest in litigation and proposed class is easily ascertainable.

16 **A. Numerosity**

17 35. The potential members of the class as defined are so numerous that joinder of all
18 the member of the class is impracticable. While the precise number of class member has not been
19 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
20 time period relevant to this lawsuit, employed more than 100 individuals were employed by
21 Defendant's within the State of California.

22 36. Accounting for employee turnover during the relevant time period increases this
23 number substantially. Plaintiff alleges that Defendants' employment records will provide
24 information as to the number and location of all class members.

25 **B. Commonality**

26 37. There are questions of law and fact common to the class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact
28 include:

- 1 a. Whether Defendants failed to pay Employees minimum wages;
- 2 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 3 c. Whether Defendants failed to pay Employees overtime as required under Labor
- 4 Code § 510;
- 5 d. Whether Defendants failed to pay Employees vacation wages as required under
- 6 Labor Code § 227.3;
- 7 e. Whether Defendants failed to pay Employees sick pay as required under Labor
- 8 Code § 245;
- 9 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
- 10 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
- 11 premium pay in lieu thereof;
- 12 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
- 13 Orders, by failing to provide Employees with requisite rest breaks or premium pay
- 14 in lieu thereof;
- 15 h. Whether Defendants violated Labor Code § 2751;
- 16 i. Whether Defendants violated Labor Code § 226(a);
- 17 j. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 18 k. Whether Defendants failed to reimburse Employees for necessary business
- 19 expenses;
- 20 l. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 21 wages and compensation due and owing at the time of termination of employment;
- 22 m. Whether Defendants violated Business and Professions Code § 17200 et seq.; and
- 23 n. Whether Employees are entitled to equitable relief pursuant to Business and
- 24 Professions Code § 17200 et seq.

25 **C. Typicality**

26 38. The claims of the named plaintiff are typical of those of the other Employees.
27 Employees all sustained injuries and damages arising out of and caused by Defendant's common
28 course of conducts in violation of statutes, as well as regulations that have the force and effect of

1 law, as alleged herein.

2 **D. Adequacy of Representation**

3 39. Plaintiff will fairly and adequately represent and protect the interest of Employees.
4 Counsel who represents Employees are experienced and competent in litigating employment class
5 actions.

6 **E. Superiority of Class Action**

7 40. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
9 questions of law and fact common to all Employees predominate over any questions affecting only
10 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
11 Defendants' illegal policies or practices of failing to compensate Employees properly.

12 41. Class action treatment will allow those persons similarly situated to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Against All Defendants)**

18 42. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 43. Defendants failed to pay Employees minimum wages for all hours worked.
21 Defendants had a consistent policy of misstating Employees time records and failing to pay
22 Employees for all hours worked. Employees would work hours and not receive wages, including
23 as alleged above in connection with working during meal breaks, time off the clock Employees
24 without compensation by booting up their computers prior to logging into the timekeeping
25 system and working with Defendants' clients before they clocked in and clocked out for the day
26 in excess of their eight-hour shift in a given work day. Additionally, Defendants had a consistent
27 policy of failing to pay Employees for hours worked during alleged meal periods for which
28 Employees were consistently denied, as also addressed herein. Moreover, Defendants did not pay

1 Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants'
2 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
3 the Class as a whole, as a result of implementing a uniform policy and practice that denied
4 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

5 44. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
6 states:

7 The minimum wage for employees fixed by the commission is the
8 minimum wage to be paid to employees, and the payment of a less
9 wage than the minimum so fixed is unlawful.

9 45. The applicable minimum wages fixed by the commission for work during the
10 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
11 therefore entitled to double the minimum wage during the relevant period.

12 46. The minimum wage provisions of California Labor Code are enforceable by private
13 civil action pursuant to California Labor Code § 1194(a) which states:

14 Notwithstanding any agreement to work for a lesser wage, any
15 employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to
17 recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest
19 thereon, reasonable attorney's fees and costs of suit.

18 47. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
19 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

20 48. California Labor Code § 1194.2 also provides for the following remedies:

21 In any action under Section 1194 . . . to recover wages because of
22 the payment of a wage less than the minimum wages fixed by an
23 order of the commission, an employee shall be entitled to recover
24 liquidated damages in an amount equal to the wages unlawfully
25 unpaid and interest thereon.

24 49. Defendants have the ability to pay minimum wages for all time worked and have
25 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
26 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

27 50. Wherefore, Employees are entitled to recover the unpaid minimum wages
28 (including double minimum wages), liquidated damages in an amount equal to the minimum

1 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
2 to California Labor Code § 1194(a).

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

5 **(Against All Defendants)**

6 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 52. By their conduct, as set forth herein, Defendants violated California Labor Code §
9 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
10 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
11 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
12 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
13 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
14 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
15 paying Employees wages for all hours worked including time off the clock Employees spent
16 without compensation by booting up their computers prior to logging into the timekeeping
17 system and working with Defendants' clients before they clocked in and clocked out for the day,
18 in excess of their eight-hour shift in a given work day. Employees regularly worked over 8 hours
19 on a given day without receiving overtime compensation.

20 53. Furthermore, on information and belief, Defendants did not pay Plaintiffs and
21 Employees the correct overtime rate for the recorded overtime hours that they generated. In
22 addition to an hourly wage, Defendants paid Plaintiffs and Employees nondiscretionary
23 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
24 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
25 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
26 rate of pay for purposes of calculating the overtime wage rate.

27 54. Therefore, during times when Plaintiffs and Employees worked overtime and
28 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,

1 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

2 55. Defendants' failure to pay compensation in a timely fashion also constituted a
3 violation of California Labor Code § 204, which requires that all wages shall be paid
4 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
5 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
6 and overtime compensation earned by Employees. Each such failure to make a timely payment of
7 compensation to Employees constitutes a separate violation of California Labor Code § 204.

8 56. Employees have been damaged by these violations of California Labor Code §§
9 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

10 57. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
11 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
12 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
13 reasonable attorneys' fees and costs.

14 **THIRD CAUSE OF ACTION**

15 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

16 **(Against All Defendants)**

17 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 59. Employees regularly worked shifts greater than five (5) hours and greater than ten
20 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
21 more than five (5) hours without providing him or her with a meal period of not less than thirty
22 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
23 meal period of not less than thirty (30) minutes.

24 60. Defendants failed to provide Employees with meal periods as required under the
25 Labor Code. Employees were consistently required to work through their meal periods which they
26 were consistently denied. Employees were also required to take meal periods after working well
27 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
28 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal

1 period as required by law.

2 61. Moreover, Defendants failed to compensate Employees for each meal period not
3 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
4 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
5 employee a meal period in accordance with this section, the employer shall pay the employee one
6 hour of pay at the employee's regular rate of compensation for each workday that the meal period
7 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
8 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
9 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
10 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
11 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

12 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
13 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
14 period not provided or deficiently provided, a sum to be proven at trial.

15 **FOURTH CAUSE OF ACTION**

16 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

17 **(Against All Defendants)**

18 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 64. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
21 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
22 not less than ten (10) minutes for each consecutive four (4) hour shift.

23 65. Defendants failed to provide Employees with timely rest breaks of not less than ten
24 (10) minutes for each consecutive four (4) hour shift.

25 66. Moreover, Defendants failed to compensate Employees for each rest period not
26 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
27 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
28 accordance with this section, the employer shall pay the employee one hour of pay at the

1 employee's regular rate of compensation for each workday that the rest period is not provided.
2 Defendants failed to compensate the Employees in the Class for each rest period not provided or
3 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
4 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
5 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
6 or by otherwise incorrectly calculating the regular rate.

7 67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
8 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
9 worked without the required rest breaks, a sum to be proven at trial.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PAY VACATION WAGES**

12 **(Against All Defendants)**

13 68. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 69. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
16 employment policy provides for paid vacation and an employee is terminated without having
17 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
18 in accordance with said contract of employment or policy respecting eligibility or time served.

19 70. Defendants paid nondiscretionary commissions, incentive pay, and/or
20 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
21 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

22 71. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
23 to Labor Code § 227.3.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO COMPLY WITH LABOR CODE § 245 ET SEQ. AND 246**

26 **(Against All Defendants)**

27 72. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 73. California Labor Code § 245 et seq. requires that Defendants provide paid sick time
2 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
3 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
4 with the pay calculation under California Labor Code § 246(l).

5 74. Defendants paid nondiscretionary commissions, incentive pay, and/or
6 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
7 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
8 calculating the amount of paid sick time due when sick time is used according to the requirements
9 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
10 rate, in violation of the law.

11 75. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
12 Code § 245 et seq. and §§ 245 et seq. and 246.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

15 **IN VIOLATION OF LABOR CODE § 2802**

16 **(Against All Defendants)**

17 76. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 77. Under Labor Code § 2802(a) an employer must indemnify its employees for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
21 of his or her duties, or of his or her obedience to the directions of the employer.

22 78. Employees incurred necessary expenditures in the performance of their job duties
23 for Defendants, namely the cost of cell phone usage, which was necessary to perform their duties
24 under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and
25 continuing to the present, Defendants consistently failed to reimburse Employees for these
26 necessarily incurred business expenses.

27 79. As a result of the unlawful acts of Defendants, Employees have been deprived of
28 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,

1 plus interest and penalties thereon, attorneys' fees, and costs.

2 **EIGHTH CAUSE OF ACTION**

3 **FAILURE TO COMPLY WITH**

4 **LABOR CODE § 2751**

5 **(Against All Defendants)**

6 80. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 81. Labor Code §2751(a) states: "Whenever an employer enters into a contract of
9 employment with an employee for services to be rendered within this state and the contemplated
10 method of payment of the employee involves commissions, the contract shall be in writing and
11 shall set forth the method by which the commissions shall be computed and paid."

12 82. Further, Labor Code §2751(b) states in pertinent part: "The employer shall give a
13 signed copy of the contract to every employee who is a party thereto and shall obtain a signed
14 receipt for the contract from each employee."

15 83. During the relevant time period, Defendants had a consistent and uniform policy,
16 practice and procedure, when entering into contracts of employment with aggrieved employees for
17 services to be rendered within California and the contemplated method of payment involved
18 commissions, of failing to utilize a written contract signed by both the employer and employee
19 setting forth the method by which the commissions shall be computed and paid.

20 84. Defendants' pattern, practice and uniform administration of corporate policy
21 regarding commission contracts as described herein is unlawful and creates an entitlement to
22 recovery by Employees, in a civil action, to the extent allowed by law.

23 85. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
24 Code § 2751.

25 **NINTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226(a)**

27 **(Against All Defendants)**

28 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 87. California Labor Code § 226(a) requires an employer to furnish each of his or her
3 employees with an accurate, itemized statement in writing showing the gross and net earnings,
4 total hours worked, and the corresponding number of hours worked at each hourly rate; these
5 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
6 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
7 statements may be given to the employee separately from the payment of wages; in either case the
8 employer must give the employee these statements twice a month or each time wages are paid.

9 88. Defendants failed to provide Employees with accurate itemized wage statements in
10 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
11 Defendants, failed to include the above requirements enumerated above. Employees' wage
12 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and
13 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).
15 The wage statements provided to Employees were confusing and required Employees to engage in
16 discovery and refer to outside sources to verify whether their pay was correct and potentially
17 resulting in a miscalculation by the Employees. Additionally, Specifically, Defendants failed in
18 their affirmative obligation to keep accurate records of the correct overtime wages based on proper
19 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
20 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
21 Moreover, the wage statements given to Employees by Defendants failed to accurately account for
22 wages, overtime, and premium pay for deficient meal periods and rest breaks, and automatically
23 deducted wages for alleged meal periods, all of which Defendants knew or reasonably should have
24 known were owed to Employees, as alleged hereinabove. The wage statements provided to
25 Employees were confusing and required Employees to engage in discovery and refer to outside
26 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
27 Employees.

28 89. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),

1 Employees suffered injuries, including among other things confusion over whether they received
2 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
3 forcing them to make mathematical computations to analyze whether the wages paid in fact
4 compensated them correctly for all hours worked.

5 90. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
6 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
7 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
8 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
9 award of costs and reasonable attorneys' fees.

10 91. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
11 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
12 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
13 employee for each pay period.

14 92. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
15 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
16 shown according to proof.

17 **TENTH CAUSE OF ACTION**

18 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

19 **AND 1174.5**

20 **(Against All Defendants)**

21 93. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

23 94. California Labor Code § 1174 requires that all employers shall keep accurate time
24 and wage records for all employees. California Labor Code § 1174.5 further requires that any
25 employee suffering injury due to a willful violation of the aforementioned obligations may seek
26 damages, including civil penalties, from the employer.

27 95. During the course of Plaintiff's and Employees' employment, Defendants
28 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as

1 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
2 overtime, and premium pay as discussed above.

3 96. Accordingly, Defendants are liable for civil penalties pursuant to the California
4 Labor Code §§ 1174.5, for the three (3) years prior to the filing of this Complaint.

5 **ELEVENTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 203**
7 **(Against All Defendants)**

8 97. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 98. Numerous Employees are no longer employed by Defendants; they either quit
11 Defendants' employ or were fired therefrom.

12 99. Defendants failed to pay these Employees all wages due and certain at the time of
13 termination or within seventy-two (72) hours of resignation.

14 100. The wages withheld from these Employees by Defendants remained due and owing
15 for more than thirty (30) days from the date of separation of employment.

16 101. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
17 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
18 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
19 to thirty (30) days from the date they were due.

20 **TWELVTH CAUSE OF ACTION**
21 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**
22 **(Against All Defendants)**

23 102. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 103. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
26 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in
27 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
28 general public. Plaintiff seeks to enforce important rights affecting the public interest within the

1 meaning of Code of Civil Procedure

2 § 1021.5.

3 104. Plaintiff is a “person” within the meaning of Business & Professions Code
4 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
5 relief, restitution, and other appropriate equitable relief.

6 105. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
7 business practices.

8 106. Wage-and-hour laws express fundamental public policies. Paying employees their
9 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
10 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
11 to enforce minimum labor standards, to ensure that employees are not required or permitted to
12 work under substandard and unlawful conditions, and to protect law-abiding employers and their
13 employees from competitors who lower costs to themselves by failing to comply with minimum
14 labor standards.

15 107. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint Defendants have acted contrary to these public policies, have violated specific
17 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
18 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,
19 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
20 guaranteed to all employees under the law.

21 108. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
22 violation of the Business & Professions Code § 17200 et seq.

23 109. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
24 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
25 care should have known that their conduct was unlawful; therefore their conduct violates the
26 Business & Professions Code § 17200 et seq.

27 110. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

1 111. Unless restrained by this Court Defendants will continue to engage in such
2 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
3 make such orders or judgments, including the appointment of a receiver, as may be necessary to
4 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
5 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
6 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
7 failed to pay.

8 **RELIEF REQUESTED**


9 WHEREFORE, Plaintiff prays for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the unpaid minimum wages for work
12 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
13 the filing of this action, as may be proven;
- 14 3. For liquidated damages in the amount equal to the unpaid minimum wage and
15 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 16 4. For compensatory damages in the amount of the hourly wage made by Employees
17 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
18 years prior to the filing of this action, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Employees
20 for each day requisite rest breaks were not provided or were deficiently provided where no
21 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
22 be proven;
- 23 6. For penalties pursuant to Labor Code § 2751 for Employees, as may be proven;
- 24 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 25 8. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 26 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
27 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 28 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

- 1 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
- 2 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 3 13. For restitution for unfair competition pursuant to Business & Professions Code
- 4 § 17200 et seq., including disgorgement or profits, as may be proven;
- 5 14. For compensatory damages in the amount of all previously unreimbursed business
- 6 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
- 7 from four (4) years prior to the original filing of this action, as may be proven;
- 8 15. For an order enjoining Defendants and their agents, servants, and employees, and
- 9 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 10 duties adumbrated in this Complaint;
- 11 16. For all general, special, and incidental damages as may be proven;
- 12 17. For an award of pre-judgment and post-judgment interest;
- 13 18. For an award providing for the payment of the costs of this suit;
- 14 19. For an award of attorneys' fees; and
- 15 20. For such other and further relief as this Court may deem proper and just.

17 DATED: September 23, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

18 By 

19 David Yeremian
20 Roman Shkodnik
21 Attorneys for Plaintiff
22 SASHA BALABANOFF
23 and the putative class

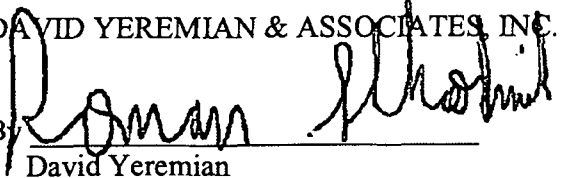
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: September 23, 2021

DAVID YEREMIAN & ASSOCIATES, INC.



B/ David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
SASHA BALABANOFF
and the putative class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Expedia, Classic Vacations Violated California Labor Laws](#)
