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Garcia, on behalf of themselves and all other
12 similarly aggrieved employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SACRAMENTO**

15 Tasha Wallace and Petra Garcia, on behalf of
16 themselves and all other similarly aggrieved
17 employees,

18 Plaintiffs,

19 vs.

20
21 Optum360 Services, Inc.; and Does 1-25,
inclusive,

22 Defendants.
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FILED
Superior Court Of California,
Sacramento
05/26/2020
amocanu
By _____, Deputy
Case Number:
34-2020-00279464

Y FAX

CASE NO.:

**COMPLAINT FOR RECOVERY OF
CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")**

(1) PAGA Civil Penalties for
Violations of Labor Code §§ 204, 210
and the Applicable Wage Order for
Failure to Pay All Wages;

(2) PAGA Civil Penalties for
Violations of Labor Code §§ 1194,
1197.1 and the Applicable Wage
Order for Failure to Pay All Minimum
Wages;

(3) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order
for Failure to Pay All Overtime
Wages;

1 (4) PAGA Civil Penalties for
2 Violations of Labor Code §§ 226.7, 512
3 and the Applicable Wage Order for
4 Failure to Provide Timely and
5 Compliant Meal Periods;

6 (5) PAGA Civil Penalties for
7 Violations of Labor Code § 226.7, and
8 the Applicable Wage Order for
9 Failure to Provide Timely and
10 Compliant Rest Periods;

11 (6) PAGA Civil Penalties for
12 Violations of Labor Code §§ 226(a),
13 226.3 and the Applicable Wage
14 Order for Failure to Provide Accurate
15 and Itemized Wage Statements;

16 (7) PAGA Civil Penalties for
17 Violations of Labor Code §§ 1174,
18 1174.5 and the Applicable Wage
19 Order for Failure to Maintain
20 Accurate Payroll Records

21 (8) PAGA Civil Penalties for
22 Violations of Labor Code §§ 201-203,
23 and the Applicable Wage Order for
24 Failure to Timely Pay All Wages Due
25 to Terminated/Separated Employees.

26 **Jury Trial Demanded**

27 Plaintiffs Tasha Wallace and Petra Garcia (“Plaintiffs”), on behalf of themselves and all
28 others similarly aggrieved allege as follows:

29 **INTRODUCTION**

30 1. Plaintiffs brings this action against Defendant Optum360 Services, Inc. (hereafter
31 “Defendant Optum360” or “Optum360”), a billing services business for companies which provide
32 healthcare. Plaintiffs were employed by Defendant Optum360 and Does 1 through 25
33 (“Defendants”) as a non-exempt hourly employees. Plaintiffs seek to recover civil penalties for
34 all California-based “aggrieved employees” during the “Relevant Time Period” (defined as March
35 19, 2019 up to and including the date of commencement of trial) who incurred wage and hour

1 violations and losses as hereinafter described.

2 2. On March 19, 2020, Plaintiffs gave notice of these claims to the California Labor
3 and Workforce Development Agency (“LWDA”) and to the agent for service of process for each
4 Defendant. Plaintiffs have not received any response from the LWDA indicating that it intends to
5 investigate these claims. Accordingly, Plaintiffs have exhausted all notice requirements under the
6 PAGA.

7 3. Plaintiff Tasha Wallace worked as a non-exempt employee for Defendants from
8 September 8, 2014 until approximately January 22, 2020, when she was separated from
9 employment. Plaintiff Petra Garcia worked as a non-exempt employee for Defendants from July
10 24, 2017 until approximately March 21, 2019 when she was separated from employment.
11 Throughout Plaintiffs’ employment, they and their co-workers were subjected to wage theft.

12 4. For example, Defendants also failed to maintain a policy that compensates its
13 employees for all overtime wages earned. Indeed, Defendants failed to include non-discretionary
14 bonuses, and other performance-based pay when calculating the regular rate of pay for overtime
15 purposes for Plaintiffs and similarly aggrieved employees in violation of California Labor Code §
16 510. And, as stated above, Defendants failed to record all hours actually worked by Plaintiffs and
17 similarly aggrieved employees, and as a result, failed to fully compensate employees for this time,
18 including overtime wages. As a result, Defendants failed to fully compensate Plaintiffs and
19 similarly aggrieved employees for all overtime wages earned.

20 5. Defendants failed to maintain a policy that compensates its employees for all
21 wages, including minimum wages, earned. Defendants failed to properly record the hours
22 Plaintiffs and similarly aggrieved employees worked and compensate employees for this time,
23 including all non-overtime and overtime pay. For example, Plaintiffs, and similarly aggrieved
24 employees performed work during meal periods for which they were not paid an hourly wage. As
25 a result, Defendants failed to fully compensate Plaintiffs and similarly aggrieved employees for all
26 wages, including minimum wages, earned.

27 6. Additionally, Defendants employed Plaintiffs and similarly aggrieved employees
28 for work periods of five (5) hours or more without being provided at least half-hour meal periods

1 in which they were relieved of all duties as required by California Labor Code §§ 226.7, 512, and
2 the applicable Industrial Welfare Commission (“IWC”) Wage Order. Defendants failed to pay
3 Plaintiffs and similarly aggrieved employees the premium compensation mandated by California
4 Labor Code § 226.7(b) for these missed meal periods.

5 7. Defendants also employed Plaintiffs and similarly aggrieved employees for work
6 periods of four (4) hours or major fraction thereof without rest periods of ten (10) minutes’ net rest
7 time and failed to compensate Plaintiffs and similarly aggrieved employees for these missed rest
8 periods, in violation of California Labor Code § 226.7, and the Wage Order. When Plaintiffs and
9 similarly aggrieved employees took rest breaks, they were regularly interrupted, less than ten (10)
10 minutes, on duty, and/or off-the-clock. Defendants failed to pay Plaintiffs and similarly aggrieved
11 employees the premium compensation mandated by California Labor Code § 226.7 for these
12 missed rest periods.

13 8. All wage statements provided to Plaintiffs and similarly aggrieved employees were
14 inaccurate and incomplete as Defendants have provided wage statements that fail to provide,
15 among other things, the correct wages earned, total hours worked, all hours worked at the
16 applicable hourly rate, all meal and rest period premiums required by the Labor Code, and a correct
17 calculation of overtime wages earned including non-discretionary bonuses and other performance-
18 based pay in violation of California Labor Code § 226(a).

19 9. Defendants have violated California Labor Code §§ 201 and 202 by willfully failing
20 to pay all compensation due and owing to Plaintiffs and similarly aggrieved employees at the time
21 their employment was terminated. Defendants willfully failed to pay aggrieved employees who
22 are no longer employed by it all compensation due upon termination of employment as required
23 under California Labor Code §§ 201 and 202 in violation of California Labor Code § 203.

24 10. Plaintiffs suffered losses as detailed above as a result of these practices and is
25 therefore an aggrieved employee under Labor Code section 2699(c). Plaintiffs are informed and
26 believe that because the Defendants used identical procedures for all employees, there are many
27 other aggrieved employees who suffered the above violations including underpayment of wages,
28 non-compliant meal periods and rest breaks, and derivative violations for inaccurate pay and wage

1 statements, failure to maintain proper timekeeping records under the Wage Order, and failure to
2 timely pay all wages due to employees who were separated or were terminated from employment
3 during the applicable limitations period, and for which recovery under PAGA is owed.

4 **JURISDICTION AND VENUE**

5 11. The relief sought by Plaintiffs on behalf of themselves and the aggrieved employees
6 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
7 according to proof at trial. The Court has personal jurisdiction over each of the parties because
8 they are either citizens of this State, doing business in this State or otherwise have minimum
9 contacts with this State.

10 12. Based on information and belief, Plaintiffs allege that this entire action arises solely
11 under the laws of the State of California and applicable regulations of the health, safety and wages
12 of the employees residing in the State of California. Plaintiffs allege, on information and belief,
13 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
14 jurisdiction.

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

18 **PARTIES**

19 **Plaintiffs**

20 14. Plaintiff Tasha Wallace is a resident of the State of California. She was employed
21 by Defendants from about September 8, 2014 until approximately January 22, 2020, when she was
22 separated from employment.

23 15. Plaintiff Petra Garcia is a resident of the State of California. She was employed by
24 Defendants from about July 24, 2017 until approximately March 21, 2019, when she was separated
25 from employment.

26 **Defendants**

27 16. Defendant Optum360 is a corporation organized under the laws of the state of
28 Delaware. Defendant Optum360 is headquartered in Minneapolis, Minnesota.

17. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

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

19. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 25, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

FIRST CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE
APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

22. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated March 19, 2019.

23. Labor Code section 204(a) provides: “All wages, other than those mentioned in

1 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
2 payable twice during each calendar month, on days designated in advance by the Employers as the
3 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
4 shall be paid for between the 16th and the 26th day of the month during which the labor was
5 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
6 month, shall be paid for between the 1st and 10th day of the following month.”

7 24. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
8 **independent and apart from, any other penalty provided in this article**, every person who fails
9 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
10 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
11 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
12 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
13 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

14 25. This statute is listed in Labor Code section 2699.5 as a statute for which violation
15 of has been established to be subject to the default civil penalty provisions in Labor Code section
16 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil
17 penalty is specifically provided, there is established a civil penalty for a violation of these
18 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
19 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
20 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
21 per pay period for each subsequent violation.”

22 26. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
23 aggrieved employees of their rightfully earned compensation, including overtime compensation
24 and hours at the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay
25 said compensation. Consequently, Plaintiffs, on behalf of themselves and other aggrieved
26 employees, intend to seek civil penalties pursuant to the PAGA for the alleged violations.

27 27. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
28 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who

1 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
2 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
3 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
4 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
5 dollars (\$100) for each underpaid employee for each pay period for which the employee was
6 underpaid.”

7 28. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
8 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
9 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
10 to proof.

11 29. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
12 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
13 labor laws and applicable regulations is determined to be in the public interest and consistent with
14 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
15 subject to Court approval.

16 **SECOND CAUSE OF ACTION**

17 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
18 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
19 **FAILURE TO PAY ALL MINIMUM WAGES**

20 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

21 30. Plaintiffs incorporates the preceding paragraphs of this Complaint expressly herein
22 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
23 dated March 19, 2019.

24 31. The Labor Code and the Wage Order provide that in the State of California an
25 employer must pay a minimum wage to an employee, which is eight dollars (\$8.00) per hour for
26 all hours worked effective January 1, 2008, nine dollars (\$9.00) per hour for all hours worked
27 effective July 1, 2014, ten dollars (\$10.00) per hour for all hours worked effective January 1, 2016,
28 ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017, eleven

1 dollars (\$11.00) per hour for all hours worked effective January 1, 2018, twelve dollars (\$12.00)
2 per hour for all hours worked effective January 1, 2019, and thirteen dollars (\$13.00) per hour for
3 all hours worked effective January 1, 2020.

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

9 33. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
10 aggrieved employees of their rightfully earned minimum wage compensation, including overtime
11 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
12 to pay said compensation. Consequently, Plaintiffs, on behalf of themselves and other aggrieved
13 employees, intend to seek civil penalties pursuant to the PAGA for the alleged violations.

14 34. Labor Code section 1197.1(a)(1) provides that: “For any initial violation that is
15 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee is underpaid. This amount shall be in addition to an amount
17 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
18 applicable penalties imposed pursuant to Section 203.”

19 35. Labor Code section 1191.1(a)(2) provides that: “For each subsequent violation for
20 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
21 pay period for which the employee is underpaid regardless of whether the initial violation is
22 intentionally committed. This amount shall be in addition to an amount sufficient to recover
23 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
24 imposed pursuant to Section 203.

25 36. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
26 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
27 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
28 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty

1 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
2 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
3 dollars (\$100) for each underpaid employee for each pay period for which the employee was
4 underpaid.”

5 37. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
6 to Labor Code section 1197.1(a) for violations of statutes and subject to civil penalties for
7 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
8 according to proof.

9 38. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
10 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
11 labor laws and applicable regulations is determined to be in the public interest and consistent with
12 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
13 subject to Court approval.

14 **THIRD CAUSE OF ACTION**

15 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,** 16 **1194, 1198 AND THE APPLICABLE WAGE ORDER FOR** 17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

19 39. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
20 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
21 dated March 19, 2019.

22 40. Labor Code section 510(a) states in pertinent part that: “Eight hours of labor
23 constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess
24 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
25 any one workweek shall be compensated at the rate of no less than one and one-half times the
26 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
27 compensated at the rate of no less than twice the regular rate of pay for an employee.”

28 41. Labor Code section 1194 states: “Notwithstanding any agreement to work for a

1 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
2 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
3 of the full amount of this minimum wage or overtime compensation, including interest thereon,
4 reasonable attorney's fees, and costs of suit."

5 42. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
6 violation of has been established to be subject to the default civil penalty provisions in Labor Code
7 section 2699(f)(2). That section provides: "(f) For all provisions of this code except those for
8 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
9 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
10 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
11 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
12 per pay period for each subsequent violation."

13 43. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
14 aggrieved employees of their rightfully earned overtime compensation as a direct and proximate
15 result of Defendants' failure to pay said compensation. Consequently, Plaintiffs, on behalf of
16 themselves and other aggrieved employees, intend to seek civil penalties pursuant to the PAGA
17 for the alleged violations.

18 44. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
19 Code section 558: "(a) Any Employers or other person acting on behalf of an Employers who
20 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
21 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
22 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
23 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
24 dollars (\$100) for each underpaid employee for each pay period for which the employee was
25 underpaid."

26 45. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
27 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
28 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according

1 to proof.

2 46. Plaintiffs will seek recovery of attorneys' fees pursuant to Labor Code section
3 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
4 labor laws and applicable regulations is determined to be in the public interest and consistent with
5 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
6 subject to Court approval.

7 **FOURTH CAUSE OF ACTION**

8 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512**

9 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**

10 **TIMELY AND COMPLIANT MEAL PERIODS**

11 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

12 47. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
13 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
14 dated March 19, 2019.

15 48. Because Plaintiffs and other aggrieved employees were non-exempt employees, the
16 Defendants were required to comply with Labor Code sections 226.7 and 512, and the applicable
17 Wage Order.

18 49. Labor Code section 226.7(b) provides: "An Employers shall not require an
19 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
20 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
21 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
22 Health."

23 50. Labor Code section 226.7(c) provides: "If an Employers fails to provide an
24 employee a meal or rest or recovery period in accordance with a state law, including, but not
25 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
26 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
27 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
28 at the employee's regular rate of compensation for each workday that the meal or rest or recovery

1 period is not provided.”

2 51. Labor Code section 512(a) provides: “(a) An Employers shall not employ an
3 employee for a work period of more than five hours per day without providing the employee with
4 a meal period of not less than 30 minutes, except that if the total work period per day of the
5 employee is no more than six hours, the meal period may be waived by mutual consent of both the
6 Employers and employee. An Employers shall not employ an employee for a work period of more
7 than 10 hours per day without providing the employee with a second meal period of not less than
8 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
9 may be waived by mutual consent of the Employers and the employee only if the first meal period
10 was not waived.”

11 52. Here, based on the foregoing, Defendants employed Plaintiffs and aggrieved
12 employees for work periods of more than five hours without a timely meal period of not less than
13 thirty minutes, where they were free from employer control, and failed to compensate them for
14 such meal periods, as required by Labor Code § 226.7 and the applicable Wage Order.

15 53. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
16 section 2699.5 as statutes for which violations of have been established to be subject to the default
17 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
18 provisions of this code except those for which a civil penalty is specifically provided, there is
19 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
20 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
21 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
22 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

23 54. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
24 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
25 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
26 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
27 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
28 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid.”

3 55. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
4 to Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for
5 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
6 according to proof.

7 56. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
8 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
9 labor laws and applicable regulations is determined to be in the public interest and consistent with
10 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
11 subject to Court approval.

12 **FIFTH CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7, AND THE**
14 **APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY**
15 **AND COMPLIANT REST PERIODS**

16 **(By Plaintiffs on behalf of all similarly aggrieved employees and as Representative of the**
17 **LWDA as against each Defendant)**

18 57. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
19 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
20 dated March 19, 2019.

21 58. Because Plaintiffs and other aggrieved employees were non-exempt employees, the
22 Defendants were required to comply with Labor Code section 226.7, and the applicable Wage
23 Order.

24 59. Labor Code section 226.7(b) provides: “An Employers shall not require an
25 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
27 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
28 Health.”

1 60. Labor Code section 226.7(c) provides: “If an Employers fails to provide an
2 employee a meal or rest or recovery period in accordance with a state law, including, but not
3 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
4 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
5 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
6 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
7 period is not provided.”

8 61. Here, based on the foregoing, Defendants employed Plaintiffs and aggrieved
9 employees for work periods of four hours or major fraction thereof without timely rest periods of
10 ten minutes where they were free of employer control, and failed to compensate them for such rest
11 periods, as required by Labor Code section 226.7 and the applicable Wage Order.

12 62. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
13 2699.5 as statutes for which violations of have been established to be subject to the default civil
14 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
15 of this code except those for which a civil penalty is specifically provided, there is established a
16 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
17 violation, the person employs one or more employees, the civil penalty is one hundred dollars
18 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
19 (\$200) for each aggrieved employee per pay period for each subsequent violation.”

20 63. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
21 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
22 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
23 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
24 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
25 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
26 dollars (\$100) for each underpaid employee for each pay period for which the employee was
27 underpaid.”

28 64. Accordingly, Defendants are subject to assessment of civil penalties pursuant to

1 Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations
2 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
3 to proof.

4 65. Plaintiffs will seek recovery of attorneys' fees pursuant to Labor Code section
5 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
6 labor laws and applicable regulations is determined to be in the public interest and consistent with
7 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
8 subject to Court approval.

9 **SIXTH CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3, AND**
11 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
12 **ITEMIZED WAGE STATEMENTS**

13 **(By Plaintiffs on behalf of all similarly aggrieved employees and against each Defendant)**

14 66. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
15 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
16 dated March 19, 2019.

17 67. Labor Code section 226(a) provides in pertinent part: "(a) An employer,
18 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
19 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if
20 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
21 gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units
22 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
23 provided that all deductions made on written orders of the employee may be aggregated and shown
24 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
25 paid, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate by the employee..."

28 68. Labor Code section 226.3 provides in pertinent part: "Any employer who violates

1 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
2 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
3 per employee for each violation in a subsequent citation, for which the employer fails to provide
4 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
5 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
6 provided by law...”

7 69. Here, during Plaintiffs and aggrieved employees’ employment with Defendants,
8 Defendants intentionally and knowingly failed to provide Plaintiffs and aggrieved employees with
9 timely and accurate wage and hour statements showing, among other things, gross and net wages
10 earned, total hours worked, all hours worked at the applicable hourly rate, and all applicable hourly
11 rates in effect during each pay period and the corresponding number of hours worked at each
12 hourly rate.

13 70. Defendants systemically failed to provide such wage statements with accurate
14 information and engaged in a policy of failing to pay for all hours actually worked.

15 71. The aforementioned conduct violated Labor Code section 226(a). It also violated
16 the applicable Wage Order on required recordkeeping. Finally, the practices described herein
17 violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement
18 actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

19 72. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
20 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
21 Code section 2699(f)(2), cited above.

22 73. Labor Code section 226.3 provides an additional recoverable penalty “in the
23 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
24 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The
25 civil penalty assessments under Section 226.3 “are **in addition** to any other penalty provided by
26 law.” [Emphasis added.]

27 74. Consequently, Plaintiffs, on behalf of themselves and other aggrieved employees,
28 seek to recover civil penalties pursuant to the PAGA for the alleged violations in an amount

1 according to proof and subject to Court approval.

2 75. Plaintiffs will also seek recovery of attorneys' fees and litigation expenses pursuant
3 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
4 enforcement of California labor laws and applicable regulations is determined to be in the public
5 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
6 according to proof and subject to Court approval.

7 **SEVENTH CAUSE OF ACTION**

8 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1174, 1174.5 AND**
9 **THE APPLICABLE WAGE ORDER FOR FAILURE TO MAINTAIN ACCURATE**
10 **PAYROLL RECORDS**

11 **(By Plaintiffs on behalf of all similarly aggrieved employees and as Representative of the**
12 **LWDA as against each Defendant)**

13 76. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
14 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
15 dated March 19, 2019.

16 77. Labor Code section 1174 provides in pertinent part that: "[e]very person employing
17 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors" and "[keep, at a central location in the state or at the plants
19 or establishments at which employees are employed, payroll records showing the hours worked
20 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
21 piece rate paid to, employees employed at the respective plants or establishments ..."

22 78. Here, during Plaintiffs and aggrieved employees' employment with Defendants,
23 Defendants intentionally and knowingly failed to maintain accurate, complete, and readily
24 available payroll records showing the actual numbers of hours worked daily by Plaintiffs and other
25 aggrieved employees, as required by the Labor Code and the Wage Order.

26 79. Labor Code section 1174.5 provides that: "Any person employing labor who
27 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
28 complete records required by subdivision (d) of Section 1174, or to allow any member of the

1 commission or employees of the division to inspect records pursuant to subdivision (b) of Section
2 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

3 80. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
4 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
5 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
6 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
7 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
8 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
9 dollars (\$100) for each underpaid employee for each pay period for which the employee was
10 underpaid.”

11 81. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
12 Labor Code section 1174.5 and subject to civil penalties for violations of the applicable Wage
13 Order as provided by Labor Code section 558(a) in an amount according to proof.

14 82. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
15 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
16 labor laws and applicable regulations is determined to be in the public interest and consistent with
17 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
18 subject to Court approval.

19 **EIGHTH CAUSE OF ACTION**

20 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203**

21 **FOR FAILURE TO TIMELY PAY ALL WAGES DUE TO**

22 **TERMINATED/SEPARATED EMPLOYEES**

23 **(By Plaintiffs on behalf of all similarly aggrieved employees and as Representative of the**

24 **LWDA as against each Defendant)**

25 83. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
26 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
27 dated March 19, 2019.

28 84. Labor Code section 201 provides in part: “If an employer discharges an employee,

1 the wages earned and unpaid at the time of discharge are due and payable immediately.”

2 85. Labor Code section 202 provides in part: “ If an employee not having a written
3 contract for a definite period quits his or her employment, his or her wages shall become due and
4 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
5 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
6 of quitting.

7 86. Labor Code section 203 provides: “If an employer willfully fails to pay, without
8 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
9 wages of an employee who is discharged or who quits, the wages of the employee shall continue
10 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
11 commenced; but the wages shall not continue for more than 30 days. An employee who secretes
12 or absents themselves or themselves to avoid payment to him or her, or who refuses to receive the
13 payment when fully tendered to him or her, including any penalty then accrued under this section,
14 is not entitled to any benefit under this section for the time during which he or she so avoids
15 payment.”

16 87. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for
17 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
18 Code section 2699(f)(2), cited above.

19 88. Here, Plaintiffs and other aggrieved employees who were separated or were
20 terminated from their employment within the applicable limitations period were not paid all wages
21 due in a timely manner including as detailed above.

22 89. Consequently, Plaintiffs, on behalf of themselves and other aggrieved employees,
23 seek to recover civil penalties pursuant to the PAGA for the alleged violations per pay period in
24 an amount according to proof and subject to Court approval.

25 90. Plaintiffs will also seek recovery of attorneys’ fees and litigation expenses pursuant
26 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
27 enforcement of California labor laws and applicable regulations is determined to be in the public
28 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount

1 according to proof and subject to Court approval.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs prays for relief as follows:

4 1. On the First Cause of Action, by Plaintiffs individually and on behalf of all
5 aggrieved employees against all Defendants, Plaintiffs seek:

6 a. Civil penalties pursuant to Labor Code § 2699(f):

7 i. \$100 for each aggrieved employee per pay period for the initial violation
8 and \$200 for each aggrieved employee per pay period for each subsequent
9 violation; and

10 b. Civil penalties pursuant to Labor Code § 558:

11 i. \$50 for each underpaid employee for each pay period; and

12 ii. \$100 per employee per pay period for subsequent violations.

13 2. On the Second Cause of Action, Plaintiffs individually and on behalf of all
14 aggrieved employees against all Defendants, Plaintiffs seek:

15 a. Civil Penalties pursuant to Labor Code § 1197.1:

16 i. \$100 for each aggrieved employee per pay period for the initial violation
17 and \$250 for each aggrieved employee per pay period for each subsequent
18 violation; and

19 b. Civil Penalties pursuant to Labor Code § 558:

20 i. \$50 for each underpaid employee for each pay period; and

21 ii. \$100 per employee per pay period for subsequent violations.

22 3. On the Third Cause of Action, by Plaintiffs individually and on behalf of all
23 aggrieved employees against all Defendants, Plaintiffs seek:

24 a. Civil penalties pursuant to Labor Code § 2699(f):

25 i. \$100 for each aggrieved employee per pay period for the initial violation
26 and \$200 for each aggrieved employee per pay period for each subsequent
27 violation; and

28 b. Civil penalties pursuant to Labor Code § 558:

- i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 4. On the Fourth Cause of Action, by Plaintiffs individually and on behalf of all aggrieved employees against all Defendants, Plaintiffs seek:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 5. On the Fifth Cause of Action, by Plaintiffs individually and on behalf of all aggrieved employees against all Defendants, Plaintiffs seek:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 6. On the Sixth Cause of Action, by Plaintiffs individually and on behalf of all aggrieved employees against all Defendants, Plaintiffs seek:
 - a. Civil penalties pursuant to Labor Code § 226:
 - i. \$50 per employee per violation for an initial citation and \$100 per employee for each violation for subsequent citations, not to exceed \$4,000 per employee; and
 - b. Civil penalties pursuant to Labor Code § 226.3:

- 1 i. \$250 per employee per violation for an initial citation and \$1,000 per
2 employee for each violation for subsequent citation;
- 3 7. On the Seventh Cause of Action, by Plaintiffs individually and on behalf of all
4 aggrieved employees against all Defendant, Plaintiffs seek:
- 5 a. Civil penalties pursuant to Labor Code § 1174.5 of \$500 for each aggrieved
6 employee whose payroll record is inaccurate under Labor Code § 1174.
- 7 b. Civil penalties pursuant to Labor Code § 558:
- 8 i. \$50 for each underpaid employee for each pay period; and
9 ii. \$100 per employee per pay period for subsequent violations.
- 10 8. On the Eighth Cause of Action, by Plaintiffs individually and on behalf of all
11 aggrieved employees against all Defendants, Plaintiffs seek:
- 12 a. Civil penalties pursuant to Labor Code § 2699(f):
- 13 i. \$100 for each aggrieved employee per pay period for the initial violation;
14 and
15 ii. \$200 for each aggrieved employee per pay period for each subsequent
16 violation.
- 17 9. For reasonable attorneys' fees under the California Labor Code and any other
18 statutes, including California Labor Code of Civil Procedure § 1021.5 and/or
19 California Labor Code § 2699(g);
- 20 10. For costs of the suit incurred herein;
- 21 11. For pre- and post-judgment interest at the prevailing statutory rate;
- 22 12. For civil penalties as described above pursuant to PAGA, 75% of which will be
23 paid to the Labor Workforce Development Agency and 25% of which will be distributed to the
24 aggrieved employees;
- 25 13. For such injunctive and equitable relief as the Court may deem just and proper; and
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