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Superior Court of California
County of Los Angeles

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individually, and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FABIO ZAMBRANO and MARTHA
CASTILLO, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

GATEWAYS HOSPITAL AND MENTAL
HEALTH CENTER; and DOES 1 through
20, inclusive,

Defendants.

Case No. 20STCV15989

Assigned for All Purposes to:
Judge Maren Nelson
Dept. 17

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Failure to Reimburse Necessary Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiffs Fabio Zambrano and Martha Castillo, individually, and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Fabio Zambrano and Martha Castillo (“Plaintiffs”) bring this putative
5 class and representative action pursuant to the Private Attorneys General Act of 2004, Cal.
6 Lab. Code. § 2698 *et seq.*, against defendants Gateways Hospital and Mental Health Center,
7 and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of themselves
8 individually and on behalf of California citizens who are and were employed by Defendants as
9 non-exempt employees throughout California.

10 2. Defendants are in the business of providing electrical services throughout
11 California.

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

16 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failing to pay overtime wages at the proper rates;
- 19 (b) Failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (d) Failing to provide accurate itemized wage statements;
- 23 (e) Failing to pay all wages due upon separation of employment; and
- 24 (f) Failing to reimburse all business expenses incurred by the employee in
25 direct consequence of the discharge of his or her duties.

26 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and
27 all others similarly situated in California to recover, among other things, unpaid wages and
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201-204, 210, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

10. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants during the Class Period in California.

11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and

1 capacities become known.

2 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
3 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
4 at all relevant times.

5 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
6 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
7 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
8 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
9 the employer and/or joint employer of Plaintiffs and the class members.

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

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

19 17. Plaintiffs are informed and believe, and thereon allege, that each of said
20 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
21 omissions, occurrences, and transactions alleged herein.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
24 himself and all others similarly situated who were affected by Defendants' Labor Code,
25 Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

26 19. All claims alleged herein arise under California law for which Plaintiffs seek
27 relief authorized by California law.

28 20. Plaintiffs' proposed class consists of and is defined as follows:

1 Class

2 All California citizens currently or formerly employed by Defendants as non-
3 exempt employees in the State of California at any time between April 6, 2016¹
4 and the date of class certification (“Class”).

5 21. Plaintiffs also seek to certify the following subclass of employees:

6 Waiting Time Subclass

7 All Class Members who separated their employment with Defendants at any time
8 between April 6, 2017 and the date of class certification (“Subclass” or “Waiting
9 Time Subclass”).

10 22. Plaintiffs reserve the right to establish other or additional subclasses, or modify
11 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
12 discovery, and specific theories of liability.

13 23. Members of the Class and the Subclass described above will be collectively
14 referred to as “Class Members.”

15 24. There are common questions of law and fact as to the Class Members that
16 predominate over any questions affecting only individual members including, but not limited to,
17 the following:

18 (a) Whether Defendants paid Plaintiffs and Class Members overtime
19 compensation at the proper rates;

20 (b) Whether Defendants failed to implement a valid alternative workweek
21 schedule and thus failed to pay Plaintiffs and Class Members proper
22 overtime compensation;

23 (c) Whether Defendants required Plaintiffs and Class Members to work over
24 8 hours per day, over twelve (12) hours per day, and/or over forty (40)
25 hours per week and failed to pay them overtime compensation at the

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

proper rate;

- (d) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without compensation;
- (e) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks without compensation;
- (f) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements;
- (g) Whether Defendants failed to timely pay Plaintiffs and the Subclass all wages due upon termination or within seventy-two (72) hours of resignation;
- (h) Whether Defendants required Plaintiffs and class members to incur expenses for work and then failed to adequately reimburse Plaintiffs and Class Members for such expenses;
- (i) Whether Defendants' conduct was willful or reckless; and
- (j) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiffs at this time, on information and belief, the class is estimated to be greater than one 100 individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay,

1 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
2 sustained by the Class Members, because they arise out of and are caused by Defendants'
3 common course of conduct as alleged herein.

4 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
5 interests of all Class Members because it is in his best interest to prosecute the claims alleged
6 herein to obtain full compensation and penalties due to them and the Class Members. Plaintiffs'
7 attorneys, as proposed class counsel, are competent and experienced in litigating large
8 employment class actions and versed in the rules governing class action discovery,
9 certification, and settlement. Plaintiffs have incurred and, throughout the duration of this action,
10 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
11 for the prosecution of this action for the substantial benefit of the Class Members.

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

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

25 **GENERAL ALLEGATIONS**

26 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and
27 other California residents as non-exempt employees at Defendants' California business
28 location(s).

1 27. Defendants continue to employ non-exempt employees within California.

2 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
3 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
4 who were knowledgeable about California's wage and hour laws, employment and personnel
5 practices, and the requirements of California law.

6 29. Plaintiffs are informed and believe, and thereon allege, that Defendants
7 improperly calculated the overtime rate of pay for Plaintiffs and Class Members because the
8 rates did not include non-discretionary wages, including, but not limited to, per diem payments,
9 bonuses, and/or other incentive pay into the computation of their regular rate of pay for
10 purposes of calculating the overtime rate of pay.

11 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and Class Members were entitled to receive proper overtime
13 wages and Defendants failed to pay all overtime wages owed, including by failing to implement
14 a proper alternative workweek schedule and thus owe Plaintiffs and Class Members unpaid
15 overtime. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members
16 were not paid all overtime wages at the proper rates of pay.

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

24 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
26 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
27 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
28 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay

1 at Plaintiffs' and Class Members' regular rate of pay when a rest break was missed.

2 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and class members were entitled to reimbursement for
4 necessary expenditures incurred in connection with the performance and execution of their job
5 duties. In violation of the California Labor Code, Plaintiffs and class members did not receive
6 adequate reimbursement for necessary business expenses, including, but not limited to,
7 reimbursement for cell phone expenses.

8 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that the Class Members were entitled to receive itemized wage statements
10 that accurately showed the gross and net wages earned, total hours worked, all applicable
11 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
12 California law. In violation of the Labor Code, the Class Members were not provided with
13 accurate itemized wage statements.

14 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that the Waiting Time Subclass members were entitled to timely payment
16 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
17 Time Subclass did not receive payment of all wages within permissible time periods.

18 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known they had a duty to compensate Plaintiffs and Class Members, and
20 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
21 intentionally failed to do so in order to increase Defendants' profits.

22 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
23 against Defendants on behalf of themselves and all Class Members to recover, among other
24 things, unpaid wages, unpaid meal period premium payments, unpaid rest period premium
25 payments, interest, attorneys' fees, penalties, costs, and expenses.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO PAY OVERTIME WAGES**

28 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

1 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
2 though fully set forth herein.

3 39. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
4 unlawful to employ persons without compensating them at a rate of pay either one and one-half
5 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
6 worked by the person on a daily or weekly basis.

7 40. Specifically, the applicable IWC Wage Orders provide that Defendants are and
8 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
9 and one-half times (1½) their regular rate of pay when working and for all hours worked in
10 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
11 eight (8) hours of work on the seventh day of work in a workweek.

12 41. The applicable IWC Wage Orders further provide that Defendants are and were
13 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
14 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
15 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

16 42. California Labor Code § 510 codifies the right to overtime compensation at one
17 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
18 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
19 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
20 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
21 seventh day of work in a workweek.

22 43. Labor Code § 510 and the applicable IWC Wage Orders provide that
23 employment of more than six days in a workweek is only permissible if the employer pays
24 proper overtime compensation as set forth herein.

25 44. Plaintiffs and Class Members were non-exempt employees entitled to the
26 protections of California Labor Code §§ 510 and 1194.

27 45. During the relevant time period, Defendants failed to pay Plaintiffs and class
28 members overtime wages at the correct rate because they failed to include non-discretionary

1 wages, including, but not limited to, per diem payments, bonuses, and/or other incentive pay in
2 the computation of their overtime rate of pay, which caused Plaintiffs and Class Members to
3 not be paid all overtime wages owed.

4 46. During the relevant time period, Defendants failed to pay Plaintiffs and Class
5 Members overtime wages for all overtime hours worked when Plaintiffs and Class Members
6 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
7 day of work in a workweek, or when Plaintiffs and Class Members worked in excess of twelve
8 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
9 week. To the extent these hours qualify for the payment of overtime, Plaintiffs and Class
10 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

11 47. During the relevant time period, Defendants failed to pay Plaintiffs and Class
12 Members all wages owed when Defendants failed to properly implement an alternative
13 workweek election.

14 48. In violation of state law, Defendants knowingly and willfully refused to perform
15 their obligations and compensate Plaintiffs and Class Members for all wages earned and all
16 hours worked.

17 49. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
18 overtime and double time compensation, as required by California law, violates the provisions
19 of Labor Code §§ 510 and 1198, and is therefore unlawful.

20 50. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
21 recover their unpaid overtime and double time compensation as well as interest, costs, and
22 attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

26 51. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
27 though fully set forth herein

28 52. Labor Code § 226.7 provides that no employer shall require an employee to work

1 during any meal period mandated by the IWC Wage Orders.

2 53. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
3 employ any person for a work period of more than five (5) hours without a meal period of not
4 less than 30 minutes, except that when a work period of not more than six (6) hours will
5 complete the day’s work the meal period may be waived by mutual consent of the employer and
6 the employee.”

7 54. Labor Code § 512(a) provides that an employer may not require, cause, or permit
8 an employee to work for a period of more than five (5) hours per day without providing the
9 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
10 the total work period per day of the employee is not more than six (6) hours, the meal period
11 may be waived by mutual consent of both the employer and the employee.

12 55. Labor Code § 512(a) also provides that an employer may not employ an
13 employee for a work period of more than ten (10) hours per day without providing the employee
14 with a second meal period of not less than thirty (30) minutes, except that if the total hours
15 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
16 consent of the employer and the employee only if the first meal period was not waived.

17 56. During the relevant time period, Plaintiffs and Class Members did not receive
18 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
19 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

20 57. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
21 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
22 compensation for each work day that a compliant meal period is not provided.

23 58. At all relevant times, Defendants failed to pay Plaintiffs and Class Members
24 meal period premiums for missed, late, and/or short meal periods pursuant to Labor Code §
25 226.7(b) and section 11 of the applicable IWC Wage Order.

26 59. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
27 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
28 Class Members suffered and continue to suffer a loss of wages and compensation.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

4 60. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 61. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 62. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

13 63. During the relevant time period, Plaintiffs and Class Members did not receive a
14 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
15 they were required to work through their daily rest periods and/or were not authorized to take
16 their rest periods.

17 64. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
18 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
19 regular rate of compensation for each work day that a compliant rest period is not provided.

20 65. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
21 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
22 226.7(b) and section 12 of the applicable IWC Wage Order.

23 66. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
24 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and
25 Class Members suffered and continue to suffer a loss of wages and compensation.

26 **FOURTH CAUSE OF ACTION**

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

28 (Violation of Labor Code § 226)

1 67. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
2 though fully set forth herein.

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

14 69. During the relevant time period, Defendants have knowingly and intentionally
15 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
16 Members. The deficiencies include, among other things, the failure to correctly state the gross
17 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
18 of hours worked at each hourly rate by the Class Members.

19 70. As a result of Defendants' knowing and intentional failure to comply with Labor
20 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
21 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
22 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
23 Members were denied both their legal right to receive, and their protected interest in receiving,
24 accurate itemized wage statements under Labor Code § 226(a). Plaintiffs have had to file this
25 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur
26 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these
27 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
28 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from

1 Defendants.

2 71. The Class Members are entitled to recover from Defendants the greater of all
3 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
4 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
5 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
6 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

7 72. Defendants' violations of California Labor Code § 226(a) prevented the Class
8 Members from knowing, understanding, and disputing the wages paid to them and resulted in
9 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
10 intentional failure to comply with California Labor Code § 226(a), the Class Members have
11 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
12 proof at trial.

13 73. The Class Members are also entitled to injunctive relief under California Labor
14 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
15 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
16 obtaining this injunctive relief.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

19 (Violation of Labor Code §§ 201, 202, and 203)

20 74. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 75. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
23 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
24 if an employee voluntarily leaves his or her employment, his or her wages shall become due
25 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
26 seventy-two (72) hours previous notice of an intention to quit, in which case the employee is
27 entitled to his or her wages at the time of quitting.

28 76. During the relevant time period, Defendants willfully failed to pay the Waiting

1 Time Subclass all their earned wages upon termination, including, but not limited to, proper
2 overtime compensation, meal period premiums, and rest period premiums either at the time of
3 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

4 77. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
5 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
6 in violation of Labor Code §§ 201 and 202.

7 78. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
8 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
9 then the wages of the employee shall continue as a penalty from the due date at the same rate
10 until paid or until an action is commenced; but the wages shall not continue for more than thirty
11 (30) days.

12 79. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
13 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
14 members' regular daily wages at their regular hourly rate of pay for each day they were not
15 paid, up to a maximum of thirty (30) days.

16 SIXTH CAUSE OF ACTION

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 (Violation of Labor Code §§ 2800, 2802)

19 80. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
20 though fully set forth herein.

21 81. Labor Code § 2800 states that an employer shall in all cases indemnify his
22 employee for losses.

23 82. Labor Code § 2802 requires employers to indemnify their employees for all
24 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
25 their duties.

26 83. Section 9 of the applicable IWC Wage Order states that when tools or equipment
27 are required by the employer or are necessary to the performance of a job, such tools and
28 equipment shall be provided and maintained by the employer.

1 84. During the relevant time period, Defendants required Plaintiffs and class members
2 to incur cell phone expenses without properly compensating them for such expenses.

3 85. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
4 Plaintiffs and class members for these expenses.

5 86. In committing the violations as herein alleged, Defendants have intentionally and
6 willfully failed to fully reimburse Plaintiffs and class members for necessary business-related
7 costs and expenses. As a direct result, Plaintiffs and class members have suffered and continue to
8 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
9 expenses, and attorney's fees.

10 **SEVENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

12 (Violation of Business and Professions Code §§ 17200, *et seq.*)

13 87. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 88. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
16 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice
17 ...”

18 89. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
19 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies
20 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
21 suffer injuries-in-fact.

22 90. Defendants' policies and practices violated state law in at least the following
23 respects:

24 (a) Failing to pay all wages to Plaintiffs and Class Members in violation of
25 Labor Code §§ 510, 511, 1194, 1194.2, and 1198;

26 (b) Failing to provide compliant meal periods without paying Plaintiffs and
27 Class Members premium wages for every day said meal periods were not
28 provided in violation of Labor Code §§ 226.7 and 512;

- 1 (c) Failing to authorize or permit compliant rest breaks without paying
2 Plaintiffs and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code §
4 226.7;
- 5 (d) Failing to provide the Class Members with accurate itemized wage
6 statements in violation of Labor Code § 226;
- 7 (e) Failing to timely pay all earned wages to the members of the Waiting
8 Time Subclass upon separation of employment in violation of Labor
9 Code §§ 201, 202, and 203; and
- 10 (f) Failing to reimburse business expenses in violation of Labor Code §§
11 2800 and 2802.

12 91. As alleged herein, Defendants systematically engaged in unlawful conduct in
13 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages,
14 failing to provide meal periods and rest periods or compensation in lieu thereof, failing to
15 furnish accurate wage statements, failing to pay all wages due and owing upon separation of
16 employment in a timely manner, and failing to reimburse business expenses, all in order to
17 decrease their costs of doing business and increase their profits.

18 92. At all relevant times herein, Defendants held themselves out to Plaintiffs and
19 Class Members as being knowledgeable concerning the labor and employment laws of
20 California.

21 93. At the time Plaintiffs and Class Members were hired, Defendants knowingly,
22 intentionally, and wrongfully misrepresented to each of them their conformance with the
23 California Labor Code and IWC Wage Orders, including proper payments required by law.

24 94. At all times relevant herein, Plaintiffs and Class Members relied on and believed
25 Defendants' representations concerning their conformance with California's wage and hour
26 laws all to their detriment.

27 95. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
28 and Class Members wages and monies, thereby creating for Defendants an artificially lower

1 cost of doing business in order to undercut their competitors and establish and/or gain a greater
2 foothold in the marketplace.

3 96. As a result of Defendants' intentional, willful, purposeful, and wrongful
4 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
5 Plaintiffs and Class Members suffered a loss of wages and monies, all in an amount to be
6 shown according to proof at trial.

7 97. By violating the foregoing statutes and regulations as herein alleged,
8 Defendants' acts constitute unfair and unlawful business practices under California Business
9 and Professions Code §§ 17200, *et seq.*

10 98. As a result of the unfair and unlawful business practices of Defendants, as
11 alleged herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
12 restitution in an amount to be shown according to proof at trial.

13 99. Plaintiffs seek to enforce important rights affecting the public interest within the
14 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
15 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
16 and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class
17 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
18 Procedure § 1021.5.

19 EIGHTH CAUSE OF ACTION

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

21 (on behalf of Plaintiff Zambrano only, pending administrative exhaustion as to Plaintiff Castillo)

22 100. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
23 though fully set forth herein.

24 101. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
25 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
26 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
27 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
28

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

3 102. For all provisions of the Labor Code except those for which a civil penalty is
4 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
7 period in which Defendants violated these provisions of the Labor Code.

8 103. Defendants' conduct violates numerous Wage Order and Labor Code sections,
9 including, but not limited to, the following:

- 10 a. violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1194, and 1198
11 for failure to timely pay all earned wages owed to Plaintiff and other
12 aggrieved employees during employment and upon separation of
13 employment as herein alleged;
- 14 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
15 periods to Plaintiff and other aggrieved employees and failure to pay
16 premium wages for missed meal periods as herein alleged;
- 17 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
18 Plaintiff and other aggrieved employees and failure to pay premium wages
19 for missed rest periods as herein alleged;
- 20 d. violation of Labor Code § 226 for failure to provide accurate itemized
21 wage statements to Plaintiff and other aggrieved employees as herein
22 alleged;
- 23 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
24 accurate and complete records showing, among other things, the hours
25 worked daily by and the wages paid to aggrieved employees; and
- 26 f. violation of Labor Code § 2802 for failure to reimburse necessary business
27 expenses to Plaintiff and other aggrieved employees.

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

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

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

107. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Fabio Zambrano and Martha Castillo as the class representatives;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

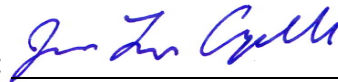
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

- 1 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 2 11. For an order requiring Defendants to restore and disgorge all funds to each
- 3 employee acquired by means of any act or practice declared by this Court to be unlawful,
- 4 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
- 5 Professions Code §§ 17200, *et seq.*;
- 6 12. For pre-judgment interest;
- 7 13. For civil penalties;
- 8 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
- 9 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
- 10 226(e), 1194, 2802(c), and 2698 *et seq.*; and
- 11 15. For such other relief as the Court deems just and proper.
- 12

13 Dated: July 22, 2020

AEGIS LAW FIRM, PC

14 By: 

15 _____
16 Jessica L. Campbell
17 Attorneys for Plaintiffs Fabio Zambrano and
18 Martha Castillo
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