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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - UNLIMITED JURISDICTION

KIM STAPLETON, LISA BO and RAQUEL
MARTINEZ, individually, as representative
aggrieved employees,

Plaintiff,

vs.

COVENANT CARE CALIFORNIA, LLC, a
California Corporation, dba ARBOR NURSING
CENTER, dba ARBOR PLACE, dba BUENA
VISTA CARE CENTER, dba CAPITAL
TRANSITIONAL CARE, dba CATERED
MANOR NURSING CENTER, dba
COURTYARD HEALTHCARE CENTER, dba
DOWNEY CARE CENTER, dba CAPITAL
TRANSITIONAL CARE, dba ENCINITAS
NURSING AND REHABILITATION CENTER,
dba GILROY HEALTHCARE AND
REHABILITATION CENTER, dba GRANT
CUESTA SUB-ACUTE AND
REHABILITATION CENTER, dba
HUNTINGTON PARK NURSING CENTER, dba
LA JOLLA NURSING AND REHABILITATION
CENTER, dba LOS ALTOS SUB-ACUTE AND
REHABILITATION CENTER, dba MISSION
SKILLED NURSING & SUBACUTE CENTER,
dba PACIFIC COAST MANOR, dba PACIFIC
GARDENS NURSING AND REHABILITATION
CENTER, dba PACIFIC HILLS MANOR, dba
PALO ALTO SUB-ACUTE &
REHABILITATION CENTER, dba ROYAL
CARE SKILLED NURSING CENTER, dba
SHORELINE CARE CENTER, dba ST. EDNA
SUB-ACUTE AND REHABILITATION
CENTER, dba TURLOCK NURSING AND
REHABILITATION CENTER, dba TURLOCK
RESIDENTIAL, dba VALLE VISTA
CONVALESCENT HOSPITAL, dba VINTAGE
FAIRE NURSING AND REHABILITATION
CENTER, dba VINTAGE FAIRE
RESIDENTIAL, dba WAGNER HEIGHTS
NURSING & REHABILITATION CENTER, dba
WAGNER HEIGHTS RESIDENTIAL, and
formerly known as COVENANT CARE
CALIFORNIA, INC. and COVENANT CARE,
INC.; COVENANT CARE CALIFORNIA, INC.,
a California Corporation, dba TURLOCK
RESIDENTIAL, dba VINTAGE FAIRE
RESIDENTIAL and dba WAGNER HEIGHTS

Case No. 37-2018-00010777-CU-OE-CTL

**THIRD AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE
ATTORNEY'S GENERAL ACT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE**

DEMAND FOR JURY TRIAL

RESIDENTIAL; COVENANT CARE
CAPITOLA, LLC, a California Corporation, dba
PACIFIC COAST MANOR; COVENANT CARE
COURTYARD, LLC, a California Corporation,
dba COURTYARD HEALTHCARE CENTER;
COVENANT CARE ENCINITAS, LLC, a
California corporation, dba ENCINITAS
NURSING AND REHABILITATION CENTER;
COVENANT CARE LA JOLLA, LLC, a
California Corporation, dba LA JOLLA
NURSING AND REHABILITATION CENTER;
COVENANT CARE LODI, LLC, a California
Corporation, dba ARBOR NURSING CENTER
and dba ARBOR PLACE; COVENANT CARE
LONG BEACH, INC, a California Corporation,
dba CATERED MANOR NURSING CENTER;
COVENANT CARE MISSION, INC., a California
Corporation, dba MISSION SKILLED NURSING
& SUBACUTE CENTER; COVENANT CARE
MORGAN HILL, LLC, a California Corporation,
dba PACIFIC HILLS MANOR; COVENANT
CARE ORANGE, INC., a California Corporation,
dba DOWNEY CARE CENTER; and DOES 1
through 20.

Defendants.

Plaintiffs Kim Stapleton, Lisa Bo and Raquel Martinez (“Plaintiffs”), on behalf of all
aggrieved employees, allege as follows:

I. INTRODUCTION

1. This is a representative action for wage and hour violations against COVENANT
CARE CALIFORNIA, LLC, and certain of its subsidiaries and other affiliated entities
(collectively “COVENANT CARE” or “Defendants”) which own and/or operate twenty-eight
healthcare and rehabilitation facilities in California. This action is brought under the California
Labor Code Private Attorney General Act of 2004 (“PAGA”) for civil penalties. Plaintiffs, who
were employed at three of Defendants’ facilities, respectively, bring this action as representative
aggrieved employees on behalf of all aggrieved employees at each of Defendants’ facilities.

2. Defendants failed to provide their nonexempt employees with meal and rest
breaks. Instead of permitting their employees to take meal breaks, Defendants often forced
employees to punch out for lunch knowing they would be required to work through their
purported lunch period due to short-staffing and overbearing workloads and excessive amount of

1 patient assignments. Defendants generally failed to pay premium pay for missed meal periods
2 and never paid premium pay for missed rest breaks.

3 3. In addition to denying their employees proper meal and rest breaks, Defendants
4 engaged in numerous other Labor Code violations, including failing to compensate employees
5 for all hours worked, failing to properly pay overtime compensation, failing to pay employees at
6 the promised hourly rates, failing timely to pay all wages owed at time of separation, failing to
7 reimburse employee expenses, failing to pay for time spent by employees before work to get
8 temperature tested for COVID-19 and engaging in false and fraudulent recordkeeping practices.

9 4. Plaintiffs allege that Defendants have engaged – and continue to engage – in a
10 pattern of violations of IWC Wage Order 5-2001 and any other applicable Wage Orders and of
11 numerous Labor Code sections, including, among others, 201, 202, 203, 204, 206, 221, 223,
12 224, 226, 226.3, 226.7, 510, 512, 558, 1194, and 1198. Plaintiffs seek civil penalties under
13 PAGA against Defendants, and each of them, for these violations as a representative of all
14 current and former aggrieved employees.

15 II. THE PARTIES

16 5. Plaintiff Kim Stapleton is a resident of San Diego County, California. She was
17 employed by Defendants as a nonexempt Registered Nurse at the La Jolla Nursing &
18 Rehabilitation Center in La Jolla from January 2016 to August 2017.

19 6. Plaintiff Lisa Bo is a current employee at Covenant Care’s Fresno facility
20 (Pacific Gardens Nursing and Rehabilitation Center) and has worked for Covenant Care as a
21 housekeeper and janitor since July 2012.

22 7. Plaintiff Raquel Martinez is a Licensed Vocational Nurse, who worked at
23 Covenant Care’s Huntington Park facility from June 2018 to May 2020.

24 8. Defendant COVENANT CARE CALIFORNIA, LLC is a California Corporation
25 with its principal place of business in Aliso Viejo, California, and is the parent company for all
26 other defendant Covenant Care entities, and owns and operates, directly and/or indirectly,
27 twenty-eight healthcare and rehabilitation facilities in California. These facilities include: Arbor
28 Nursing Center (also dba for Covenant Care Lodi, LLC), Arbor Place (also dba for Covenant

Care Lodi, LLC), Buena Vista Care Center, Capital Transitional Care, Catered Manor Nursing Center (also dba for Covenant Care Long Beach, Inc.), Courtyard Healthcare Center (also dba for Covenant Care Courtyard, LLC), Downey Care Center (also dba for Covenant Care Orange, Inc.), Encinitas Nursing And Rehabilitation Center (also dba for Covenant Care Encinitas, LLC), Gilroy Healthcare And Rehabilitation Center, Grant Cuesta Sub-Acute And Rehabilitation Center, Huntington Park Nursing Center, La Jolla Nursing And Rehabilitation Center (also dba for Covenant Care La Jolla, LLC), Los Altos Sub-Acute And Rehabilitation Center, Mission Skilled Nursing & Subacute Center (also dba for Covenant Care Mission, Inc.), Pacific Coast Manor (also dba for Covenant Care Capitola, LLC), Pacific Gardens Nursing And Rehabilitation Center, Pacific Hills Manor (also dba for Covenant Care Morgan Hill, LLC), Palo Alto Sub-Acute & Rehabilitation Center, Royal Care Skilled Nursing Center, Shoreline Care Center, St. Edna Sub-Acute And Rehabilitation Center, Turlock Nursing And Rehabilitation Center, Turlock Residential (also dba for Covenant Care California, Inc.), Valle Vista Convalescent Hospital, Vintage Faire Nursing And Rehabilitation Center, Vintage Faire Residential (also dba for Covenant Care California, Inc.), Wagner Heights Nursing & Rehabilitation Center, and Wagner Heights Residential (also dba for Covenant Care California, Inc.) (collectively “the Facilities”). On information and belief, Defendant Covenant Care California, LLP was formerly known as Covenant Care California, Inc. and Covenant Care, Inc.

9. Defendant COVENANT CARE CALIFORNIA, INC. is, on information and belief, a California corporation with its principal place of business in Aliso Viejo, California.

10. Defendant COVENANT CARE CAPITOLA, LLC is, on information and belief, a California corporation with its principal place of business in Capitola, California.

11. Defendant COVENANT CARE COURTYARD, LLC is, on information and belief, a California corporation with its principal place of business in Davis, California.

12. Defendant COVENANT CARE ENCINITAS, LLC is, on information and belief, a California corporation with its principal place of business in Encinitas, California.

13. Defendant COVENANT CARE LA JOLLA, LLC is, on information and belief, a California corporation with its principal place of business in La Jolla, California.

1 14. Defendant COVENANT CARE LODI, LLC is, on information and belief, a
2 California corporation with its principal place of business in Lodi, California.

3 15. Defendant COVENANT CARE LONG BEACH, INC. is, on information and
4 belief, a California corporation with its principal place of business in Long Beach, California.

5 16. Defendant COVENANT CARE MISSION, INC. is, on information and belief, a
6 California corporation with its principal place of business in Santa Clara, California.

7 17. Defendant COVENANT CARE MORGAN HILL, LLC is, on information and
8 belief, a California corporation with its principal place of business in Morgan Hill, California.

9 18. Defendant COVENANT CARE ORANGE, INC. is, on information and belief, a
10 California corporation with its principal place of business in Downey, California.

11 19. The true names or capacities, whether individual, corporate, associate, or
12 otherwise of Defendants Does 1 to 20, inclusive, being unknown, Plaintiffs assert their claims
13 against these Defendants under fictitious names pursuant to Code of Civil Procedure section
14 474. Plaintiffs will amend their Complaint to allege such Doe Defendants' true names and
15 capacities once they are ascertained. (As used in this Third Amended Complaint, the term
16 "Defendants" refers, individually and collectively, to the named defendants, and Does 1 to 20,
17 and each of them.)

18 20. Plaintiffs are informed and believe, and thereon allege, that each Defendant
19 named in this Complaint, and each Doe Defendant, is in some manner responsible for the wage
20 and hour violations, wrongs and damages and for the PAGA penalties alleged below, and in so
21 acting was functioning, as the joint employer of Plaintiffs, and the other aggrieved employees,
22 and/or as the agent, servant, partner, alter ego and/or employee of the other Defendants, and in
23 doing the actions described below, was acting within the course and scope of its authority as
24 such joint employer, agent, servant, partner, and/or employee with the permission and consent of
25 each of the other Defendants. Covenant Care California LLC and the other entity defendants
26 further comprise a single enterprise. All acts herein alleged were approved of and ratified by
27 each of the Defendants.
28

III. FACTUAL ALLEGATIONS

21. COVENANT CARE at all times relevant employed, and employs, numerous individuals in the Facilities in hourly, non-exempt positions (hereafter collectively “aggrieved employees”).

22. COVENANT CARE CALIFORNIA, LLC is a joint employer of Plaintiffs and each of the other aggrieved employees of the Facilities. While it appears that COVENANT CARE CALIFORNIA, LLC has organized subsidiary entities (identified in paragraphs 7 through 17 above) which may nominally act as employers of some of the Facility employees, in fact COVENANT CARE CALIFORNIA, LLC at all times relevant exercised control over the wages, hours and working conditions of all Facility employees and suffered or permitted them to work there. For example, COVENANT CARE CALIFORNIA, LLC’s website identifies each of the twenty eight facilities as COVENANT CARE CALIFORNIA, LLC facilities (<http://www.covenantcare.com/Find-A-Location/Locations-ByName>) and does not state or suggest anywhere that the Facilities are not owned, operated, and/or controlled by it; the Facilities, to the extent they purport to be operated by a subsidiary, all give as their Licensee address the same Aliso Viejo, California address as COVENANT CARE CALIFORNIA, LLC, and they all list the same individual as their agent for service of process; on information and belief the employee handbook for COVENANT CARE CALIFORNIA, LLC is the same for all employees of all the Facilities; and the website for each Facility is part of the COVENANT CARE CALIFORNIA, LLC website (<http://www.covenantcare.com>), showing the same Alisa Viejo, California “contact us” address as for COVENANT CARE CALIFORNIA LLC.

23. Plaintiff Kim Stapleton is a former employee of California Covenant La Jolla, LLC, dba La Jolla Nursing and Rehabilitation Center, which along with COVENANT CARE CALIFORNIA, LLC, were her joint employers. Plaintiffs Lisa Bo is and Raquel Martinez was employed directly by COVENANT CARE CALIFORNIA, LLC.

FAILURE TO PROVIDE MEAL AND REST BREAKS

24. Defendants’ custom, policy and practice at all relevant times have been not to provide rest periods to its employees and often not to provide meal periods to its employees and

1 not to pay premium pay to its employees when they have not been provided meal and rest
2 periods.

3 25. Defendants nonexempt personnel, and especially Registered Nurses, Licensed
4 Vocational Nurses, Certified Nursing Assistants and other nursing personnel, including
5 Plaintiffs Kim Stapleton and Raquel Martinez, employed by defendants at its Facilities were and
6 generally are not able to take meal periods. This is principally because the Facilities are
7 severely understaffed for nursing personnel and nurses are overworked; as a result, nursing
8 personnel are often unable to take lunches because no one is otherwise available to care for the
9 patients.

10 26. On a daily basis, Defendants at all times relevant generally required nurses to
11 clock out before the end of the fifth hour of each shift and, where applicable, again before the
12 end of the tenth hour of work, without regard to whether they actually stopped working at that
13 time – to provide the appearance that they were taking code compliant meal breaks.

14 27. When nurses have complained to Defendants about the failure to provide lunch
15 periods, managers simply tell them to stop complaining and to keep working. Employees who
16 failed to clock out “on time” for meal breaks are often warned not to do so.

17 28. Defendants generally took no action to actually provide compliant meal breaks
18 for their employees, such as to provide scheduling that would allow employees to take
19 compliant meal breaks, and instead required or suffered employees to continue working off the
20 clock.

21 29. Even on the occasions when Plaintiffs Kim Stapleton and Raquel Martinez and
22 the other Facility nursing employees were able to take a meal break within the first five hours of
23 work (or where applicable, again before the end of the tenth hour of work), the breaks provided
24 to them were generally not for a full 30 minutes and were not “off-duty.” Rather, Plaintiffs Kim
25 Stapleton and Raquel Martinez and the other aggrieved nursing personnel employees were
26 required to perform their job duties during these purported breaks.

31. At all times relevant hereto, rest breaks were not provided to Plaintiffs and the other nonexempt employees at the Facilities. Defendants were aware that, due to the severe understaffing, employees did not have time to take rest breaks and instead were required to continue working. Defendants took no action to provide scheduling that could make it possible for employees to take rest breaks. When employees complained to management about the failure to provide rest breaks, Defendants again simply tell them to stop complaining and to keep working.

32. Defendants' personnel policies also unlawfully at all times required employees to remain on premises during rest breaks. As such, defendants' policies constituted a *per se* violation of the law to provide duty-free rest breaks.

33. On information and belief, Defendants' practices are on-going.

OTHER VIOLATIONS

34. Defendants failed to pay employees at the Facilities overtime for hours worked in excess of eight hours per day or 40 hours per week in violation of Labor Code Sections 510, 1194, and 1198. Many nurses work in excess of 8 hours per day, and are not paid overtime or properly paid. In fact, Defendants at all times relevant generally instructed nurses to clock out to avoid showing more than 8 hours on their timesheets, knowing that nurses continue to work past 8 hours because of understaffing and the overbearing workloads and excessive amount of patient assignments.

35. In addition, all employees are entitled to compensation for any and all time spent working off-the-clock when required to clock out and continue working through their purported meal period and/or when they were required or suffered to continue working at the end of a shift after clocking out.

36. Defendants failed to pay all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks and compensation

1 at promised pay rates) at the time of termination or within 72 hours of resignation in violation of
2 Labor Code sections 201, 202, 203, and 206. Plaintiffs' and other aggrieved employees' earned
3 wages were not timely paid in full following their separation from COVENANT CARE.

4 37. Defendants also failed to pay all earned wages (including overtime
5 compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks and
6 compensation at promised hourly rates) at least twice a month in violation of Labor Code
7 Section 204.

8 38. Defendants at all times relevant further failed to provide accurate, itemized
9 statements of hours worked, wages, and deductions in violation of the Wage Orders and Labor
10 Code Section 226. As described above, Defendants required employees to work off the clock
11 (including but not limited to times when employees were required to clock out to create false
12 evidence of meal breaks or not working overtime). Thus, not all hours worked were
13 documented on employees' wage statements. Additionally, the wage statements did not reflect
14 premium pay owed to the employees for missed meal and rest breaks, the pay rates were missing
15 and/or wrong, the inclusive dates of the pay period were missing, and the employer's name was
16 missing. In addition, some of the information appearing on the wage statements is wrong.

17 39. Plaintiffs are informed and believe, and thereon allege, that Defendants
18 improperly, and in violation of California law, failed to reimburse other aggrieved employees
19 for all necessary business expenses incurred in the direct discharge of their duties.

20 40. In or about March 2020, Defendants initiated a policy and practice requiring non-
21 exempt employees to wait in line for approximately 4-7 minutes before clocking in for the start
22 of their shift to have their temperature taken due to the Covid-19 pandemic and they were not
23 paid for such time.

24 41. Plaintiff is informed and believes that the foregoing policies and practices apply
25 at each of the Facilities and are continuing.

26 **FACTS SPECIFIC TO PLAINTIFF KIM STAPLETON**

27 42. Plaintiff Kim Stapleton was employed by Defendants as a non-exempt Registered
28 Nurse at La Jolla Nursing and Rehabilitation Center from January 2016 through August 2017.

1 43. Plaintiff Stapleton was not provided a 10-minute rest break for each four hours
2 worked, or major fraction thereof, and was never compensated for non-provided rest breaks.

3 44. Plaintiff Stapleton was sometimes not provided a 30-minute, off-duty meal break.
4 She was sometimes required to clock out for a purported meal period within the first five hours
5 of her work day (and where applicable again before the end of the tenth hour of work) even
6 when she was not actually able to take a meal break and had to continue working. That is,
7 Defendants required or suffered Plaintiff Stapleton to perform work off the clock. She was
8 sometimes not compensated for the missed meal breaks and was never compensated for the
9 labor she performed off the clock.

10 45. Plaintiff Stapleton was promised raises but was not paid them.

11 46. When Plaintiff Stapleton's employment was terminated, Defendants failed to pay
12 all earned wages (including wages for off-the-clock work, premium pay for missed meal and
13 rest breaks and compensation at promised hourly rates) at the time of termination in violation of
14 Labor Code sections 201, 202, 203, and 206.

15 47. Defendants failed to pay Plaintiff Stapleton all earned wages (including wages
16 for off-the-clock work, premium pay for missed meal and rest breaks and compensation at
17 promised hourly rates) at least twice a month in violation of Labor Code section 204.

18 48. Defendants failed to provide accurate, itemized statements of hours worked,
19 wages, and deductions in violation of Wage Order paragraph 7 and Labor Code section 226 to
20 Plaintiff Stapleton. As described above, Plaintiff Stapleton's wage statements failed to
21 document all hours worked, did not reflect premium pay owed to her for non-provided rest
22 breaks and meal periods, pay rates are missing and/or wrong, the inclusive dates of the pay
23 period are missing, the employer's name is missing and some of the information is wrong.

24 **FACTS SPECIFIC TO PLAINTIFF LISA BO**

25 49. Plaintiff Lisa Bo is a current employee at Covenant Care's Fresno facility
26 (Pacific Gardens Nursing and Rehabilitation Center) and has worked for Covenant Care as a
27 housekeeper and janitor since July 2012.
28

1 50. While working in the laundry room, Plaintiff Bo, due to understaffing, has never
2 received a 10-minute rest break or a 30-minute meal break.

3 51. Defendants deducted 30 minutes from Plaintiff Bo's time records each day to
4 indicate that she had taken a meal break, even though no meal period had been taken or even
5 provided.

6 52. While working as a janitor, Plaintiff Bo was at all times not provided 10-minute
7 rest breaks. These breaks are and were not scheduled or supervised. On a regular and frequent
8 basis, due to understaffing, she was at all times instructed to keep working rather than take a
9 break, most commonly because new patients are expected to arrive and rooms must be cleaned
10 urgently to accommodate them.

11 53. Plaintiff Bo was never paid premium pay for the missed meal and rest breaks.

12 54. Defendants failed to pay Plaintiff Bo all earned wages (including wages for off-
13 the-clock work, premium pay for missed meal and rest breaks and compensation at promised
14 hourly rates) at least twice a month in violation of Labor Code section 204.

15 55. Plaintiff Bo was at all times required to purchase her own work uniform, and
16 purchase seven sets of scrubs in the distinctive colors required by Defendants. In addition, since
17 approximately March 2020, Plaintiff Bo has also been required to launder her own work
18 uniform at a laundromat due to the risk of exposure to COVID-19 by laundering the uniform at
19 home. Plaintiff Bo has not been reimbursed by Defendants for these expenses.

20 56. Since approximately March 2020, pursuant to Defendants' policies, Plaintiff Bo
21 has been required to wait in line for approximately 4-7 minutes before clocking in for the start of
22 her shift to have her temperature taken due to the Covid-19 pandemic and was not paid for such
23 time.

24 57. Defendants failed to provide accurate, itemized statements of hours worked,
25 wages, and deductions in violation of Wage Order paragraph 7 and Labor Code section 226 to
26 Plaintiff Bo. As described above, Plaintiff Bo's wage statements failed to document all hours
27 worked, did not reflect premium pay owed to her for non-provided rest breaks and meal periods,
28

1 pay rates are missing and/or wrong, the inclusive dates of the pay period are missing, the
2 employer's name is missing and some of the information is wrong.

3 **FACTS SPECIFIC TO PLAINTIFF RAQUEL MARTINEZ**

4 58. Plaintiff Raquel Martinez is a Licensed Vocational Nurse, who worked at
5 Covenant Care's Huntington Park facility from June 2018 to May 2020.

6 59. Plaintiff Martinez was not provided a 10-minute rest break for each four hours
7 worked, or major fraction thereof, and was never compensated for non-provided rest breaks.

8 60. Plaintiff Martinez was sometimes not provided a 30-minute, off-duty meal break.
9 She was sometimes required to clock out for a purported meal period within the first five hours
10 of her work day (and where applicable again before the end of the tenth hour of work) even
11 when she was not actually able to take a meal break and had to continue working. That is,
12 Defendants required or suffered Plaintiff Martinez to perform work off the clock. She was
13 sometimes not compensated for the missed meal breaks and was never compensated for the
14 labor she performed off the clock.

15 61. Since approximately March 2020, pursuant to Defendants' policies, Plaintiff
16 Martinez has been required to wait in line for 4-7 minutes before clocking in for the start of her
17 shift to have her temperature taken due to the Covid-19 pandemic and was not paid for such
18 time.

19 62. When Plaintiff Martinez' employment was terminated, Defendants failed to pay
20 all earned wages (including wages for off-the-clock work, premium pay for missed meal and
21 rest breaks and compensation at promised hourly rates) at the time of termination in violation of
22 Labor Code sections 201, 202, 203, and 206.

23 63. Defendants failed to pay Plaintiff Martinez all earned wages (including wages for
24 off-the-clock work, premium pay for missed meal and rest breaks and compensation at promised
25 hourly rates) at least twice a month in violation of Labor Code section 204.

26 64. Defendants failed to provide accurate, itemized statements of hours worked,
27 wages, and deductions in violation of Wage Order paragraph 7 and Labor Code section 226 to
28

Plaintiff Martinez. As described above, Plaintiff Martinez’ wage statements failed to document all hours worked, did not reflect premium pay owed to her for non-provided rest breaks and meal periods, pay rates are missing and/or wrong, the inclusive dates of the pay period are missing, the employer’s name is missing and some of the information is wrong.

IV. LABOR CODE VIOLATIONS
FAILURE TO PROVIDE MEAL PERIODS
Wage Orders ¶ 11; Cal. Lab. Code §§ 226.7, 512

65. California Labor Code § 512 provides, in pertinent part, as follows:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

66. Cal. Labor Code § 226.7(a) provides: “An employer shall not require an employee to work during any meal . . . period mandated pursuant to an . . . order of the Industrial Welfare Commission.”

67. Paragraph 11(A) of the Wage Orders provides, in pertinent part, as follows: “Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

68. As alleged herein, Plaintiffs sometimes and other aggrieved employees routinely and uniformly were not provided with meal periods at all or in a timely-fashion and instead were required to forego the meal periods required to be provided to them.

69. Defendants sometimes forced Plaintiffs and routinely and uniformly forced other aggrieved employees to clock out to mask the failure to provide compliant uninterrupted off duty meal periods within the first five hours of their work day (and, where applicable, within the second five hours of their work day) when in fact they either received no meal period at all or were not provided a full 30-minute off-duty meal period.

1 70. By failing to provide Plaintiffs and other aggrieved employees with these meal
2 periods, Defendants, and each of them, violated California Labor Code Sections 512 and 226.7,
3 as well as applicable provisions of the Wage Orders.

4 71. As a result of the unlawful acts of Defendants set forth herein, Plaintiffs and the
5 other aggrieved employees have been unfairly and illegally deprived of up to two meal periods
6 per day, and Defendants, and each of them, failed to pay one additional hour of premium pay for
7 each missed meal period.

8 **FAILURE TO PROVIDE REST PERIODS**
9 **Wage Orders ¶ 12; Cal. Lab. Code §§ 226.7, 512**

10 72. Paragraph 12(A) of the Wage Orders authorizes employees to take paid rest
11 periods based on the total hours worked daily at the rate of ten minutes rest per four hours or
12 major fraction thereof. It provides that rest periods “shall be counted as hours worked for which
13 there shall be no deduction from wages.”

14 73. Cal. Labor Code § 226.7(a) provides: “An employer shall not require an
15 employee to work during any . . . rest or recovery period mandated pursuant to an . . . order of
16 the Industrial Welfare Commission.”

17 74. Plaintiffs and other aggrieved employees routinely and uniformly were not
18 provided with the rest periods required to be provided to them, which amounted to a total of two
19 to three rest periods per day, depending upon the actual length of their workday.

20 75. Defendants’ personnel policies also unlawfully at all times required employees to
21 remain on premises during rest breaks. As such, defendants’ policies constituted a per se
22 violation of the law to provide duty-free rest breaks.

23 76. By failing to provide Plaintiffs and other aggrieved employees with these rest
24 periods, Defendants, and each of them, violated Paragraph 12 of the Wage Orders and California
25 Labor Code section 226.7. As a result of the unlawful acts of Defendants set forth herein,
26 Plaintiffs and the other aggrieved employees have been unfairly and illegally deprived of up to
27 three rest periods per day, and Defendants failed to pay one additional hour of premium pay for
28 each missed rest period.

FAILURE TO PAY OVERTIME WAGES
Wage Orders ¶ 3; Cal. Labor Code §§ 510, 1194 *et seq.*, 1198

77. California Labor Code § 510(a) provides, in pertinent part, as follows:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

78. California Labor Code § 1194 provides, in pertinent part, as follows:

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

79. Paragraph 3(A) of the Wage Orders provides, in pertinent part, as follows:

[E]mployees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
* * *

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

80. Aggrieved employees did not receive proper compensation for all hours worked in excess of eight (or twelve) hours per day or forty hours per week.

81. Defendants routinely forced aggrieved employees to clock out after 8 hours, knowing that due to understaffing and excessive amount of patient assignments, these aggrieved employees worked beyond 8 hours a day. As such, Defendants effectively falsified time records to indicate that aggrieved employees did not work overtime or did not work the amount of overtime they actually worked, when in fact they did work overtime or worked more overtime than the records were altered to indicate.

82. By their conduct described above, Defendants, and each of them, violated, *inter alia*, the provisions of California Labor Code §§ 510, 1194, 1198, and Paragraph 3 of the Wage Orders.

83. As a result of the wrongful and unlawful acts of Defendants alleged herein, aggrieved employees have been deprived of overtime compensation.

FAILURE TO PAY FOR ALL HOURS WORKED
Wage Orders, ¶¶ 4(B), 11; Cal. Lab. Code §§ 221, 223

84. Paragraph 4(B) of the Wage Orders provides that all employers must “pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

85. As described above, Defendants sometimes forced Plaintiffs and generally forced other aggrieved employees to clock out before the end of the fifth hour of their shifts (and where applicable, before the end of the second five hours of their shifts) to give the false impression that had been provided with compliant meal breaks (when they had not). Defendants sometimes also forced Plaintiff Stapleton and Martinez and generally also forced other aggrieved employees to clock out at the end of 8 hours of work, despite knowing that employees worked well beyond that time due to understaffing, overbearing workloads and excessive amount of patient assignments. Contrary to these appearances, Defendants required or suffered Plaintiffs and the other aggrieved employees to continue working off the clock through these purported meal periods and after 8 hours. As further described above, Defendant also failed to compensate Plaintiffs and other aggrieved employees at hourly rates promised by Defendants.

86. Pursuant to Paragraph 11 of the Wage Orders, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and *counted as time worked*” (emphasis added). Plaintiff and the other aggrieved employees were never, or if so rarely, compensated for the time worked during his purported meal periods, in violation of Paragraphs 4(B) and 11.

87. Defendants generally likewise required or suffered Plaintiffs and the other aggrieved employees to perform work off the clock at the end of a shift. Plaintiffs and the other

1 aggrieved employees were never compensated for this off-the-clock labor, in violation of
2 Paragraph 4(B).

3 88. By their conduct described above, Defendants, and each of them, violated, *inter*
4 *alia*, Paragraph 4(B) and 11 of the Wage Orders.

5 **FAILURE TO TIMELY PAY ALL EARNED WAGES**
6 **Cal. Lab. Code § 204**

7 89. California Labor Code § 204 provides, in pertinent part, as follows: “All wages . .
8 . earned by any person in any employment are due and payable twice during each calendar
9 month. . . .”

10 90. As alleged herein, Defendants, and each of them, knowingly and intentionally
11 failed to provide Plaintiffs and the other aggrieved employees with premium pay for all missed
12 and untimely meal and rest breaks and regular and overtime wages for off the clock work and
13 compensate them at the promised hourly rates within the time frame mandated by the California
14 Labor Code and thus violated Cal. Lab. Code § 204.

15 **WAITING TIME PAY**
16 **Cal. Lab. Code §§ 201-203, 206, 558.1**

17 91. California Labor Code § 201(a) provides, in pertinent part, as follows: “If an
18 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
19 and payable immediately.”

20 92. California Labor Code § 202(a) provides, in pertinent part, as follows:

21 If an employee not having a written contract for a definite period quits his
22 or her employment, his or her wages shall become due and payable not
23 later than 72 hours thereafter, unless the employee has given 72 hours
24 previous notice of his or her intention to quit, in which case the employee
25 is entitled to his or her wages at the time of quitting.

26 93. California Labor Code § 206(a) provides, in pertinent part, as follows:

27 In case of a dispute over wages, the employer shall pay, without
28 condition, and within the time set by this article, all wages, or parts
thereof, conceded by him to be due, leaving to the employee all remedies
he might otherwise be entitled to as to any balance claimed.

94. California Labor Code § 203(a) states:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any

wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

95. Where an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201 through 203 of the California Labor Code, all wages due to an employee who has been discharged or has quit, California Labor Code section 203 entitles the affected employee to receive from the employer a penalty of up to 30 days wages calculated from the due date of the wages until the time an action to recover the wages is commenced.

96. As alleged herein, Defendants, and each of them, have failed to pay earned wages (including but not limited to overtime compensation, premium pay for missed meal and rest breaks, uncompensated time and compensation at promised hourly rates) to Plaintiffs Stapleton and Martinez and the other aggrieved employees who are former employees at the time they became due and payable, and have thus violated sections 201, 202 and 206 of the California Labor Code.

97. Defendants' failure to pay wages as alleged herein was willful in that Defendants knew that Plaintiffs and the other aggrieved employees were not receiving all of their earned compensation because, *inter alia*, Defendants knowingly failed to provide Plaintiffs and other aggrieved employees with meal and rest breaks, and instead directed and required Plaintiffs and other aggrieved employees not to take such breaks, falsified time records to avoid having to pay premium wages, failed to pay premium wages owed, did not fully, fairly and properly compensate Plaintiffs and other aggrieved employees for said break periods and did not compensate Plaintiffs Bo and Martinez for time spent waiting for pre-shift COVID-19 related temperature checks.

98. As a result of Defendants' willful and unlawful acts discussed herein, Defendants failed to pay Plaintiffs Stapleton and Martinez and other aggrieved employees who are no longer employed by Defendants what they were owed at the time of discharge or quitting in violation of Labor Code Section 203.

VIOLATION OF WAGE STATEMENT AND RECORD KEEPING REQUIREMENTS
California Labor Code §§ 226, 226.3, 558.1; Wage Orders ¶ 7

99. California Labor Code § 226(a) provides, in pertinent part, as follows:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing . . . gross wages earned, . . . total hours worked by the employee . . . all deductions . . . net wages earned, inclusive dates of the period for which the employee is paid, the employer's name, . and . . . all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. Paragraph 7 of the Wage Orders provides additionally, in pertinent part, as follows:

Every employer shall keep accurate information with respect to each employee including the following:

* * *

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. . . .

(5) Total hours worked in the payroll period and applicable rates of pay.

* * *

Every employer shall semimonthly or at the time of each payment of wages furnish each employee . . . an itemized statement in writing showing: (1) all deductions . . .

101. Defendants, and each of them, have violated the above Labor Code section and the Wage Orders with respect to Plaintiffs and the other aggrieved employees by failing to keep accurate time records showing all hours worked and when the employee begins and ends each work period, and by also failing to provide accurate itemized statements of earnings showing: all hours worked, the rate of compensation, misstating gross wages earned, premium pay owed to the employees for missed meal and rest breaks, pay rates (at all or inaccurately), inclusive dates of the pay period, and the employer's name. In addition, some of the information shown is inaccurate.

FIRST CAUSE OF ACTION
CIVIL PENALTIES – PAGA

Labor Code §§ 226.3, 558, 558.1, 2698, 2699, 2802(a) *et seq.*; Wage Orders ¶ 9

102. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

103. California Labor Code § 2699 provides in pertinent part, as follows:

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees...

* * *

(c) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

* * *

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

* * *

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

* * *

(g)(1) ... Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs. Nothing in this part shall operate to limit an employee’s right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

104. California Labor Code § 558 provides in pertinent part, as follows:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .
* * *

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

105. Cal. Lab. Code § 226.3 further provides that an employer who violates § 226(a) “shall be subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation . . . The civil penalties provided for in this section are in addition to any other penalty provided by law.”

106. Plaintiffs are aggrieved employees. They were employed by Defendants, and each of them, and some or all of the violations alleged herein were committed against each of them. Plaintiffs bring this action on behalf of themselves and all other current and former aggrieved employees of Defendants who worked at the Facilities. Aggrieved employees include current and former employees who suffered at least one violation of the Labor Code.

107. At the time of each violation, Defendants employed one or more employees.

108. At all times, Defendants, and each of them, established and controlled the employees’ scheduling, rest breaks, meal breaks, premium pay, overtime, wage statements, waiting time pay, and record keeping. Defendants, and each of them, caused the violations alleged in this Complaint, including of Labor Code §§ 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.7, 510, 512, 1194 *et seq.*, and 1198, and are liable for civil penalties under Labor Code sections 2699, 226.3, and 558 (not including any unpaid wages).

109. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiffs are entitled to civil penalties against said defendants in an amount to be determined at trial, costs and attorney’s fees.

110. Plaintiffs have complied with all procedural requirements of Labor Code § 2699.3, by letters and/or amended letters, sent by certified mail, notifying the Labor and

1 Workforce Development Agency (“LWDA”) and each Defendant of the specific provisions of
2 the Labor Code that Defendants have violated. LWDA did not respond to these notices and/or
3 amended notices of the alleged violations within the statutory timeframe, 65 calendar days of the
4 postmark date of the notice letters. Plaintiffs have therefore exhausted their administrative
5 remedies. Pursuant to Labor Code § 2699.3, Plaintiffs are permitted to pursue their PAGA
6 claims in this action.

7 111. Wherefore, Plaintiffs, and each of them, pray for relief and judgment as set forth
8 below.

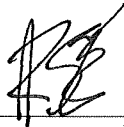
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, and each of them, pray for judgment in her favor and relief
11 against Defendants, and each of them, as follows:

- 12 (a) For civil penalties under PAGA in an amount to be determined at trial, but at
13 least the jurisdictional amount of this court;
14 (b) For attorneys’ fees and costs; and
15 (c) For all such other and further relief as the Court may deem just, proper and
16 equitable.

17 Dated: March 23, 2021

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

18
19 By: 

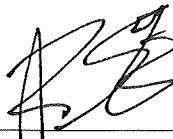
R. Scott Erlewine
Attorneys for Plaintiffs

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby request a trial by jury of all issues so triable.

24 Dated: March 23, 2021

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

25
26 By: 

R. Scott Erlewine
Attorneys for Plaintiffs

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen and not a party to this action. My business address is Phillips Erlewine, Given & Carlin LLP, 39 Mesa Street, Suite 201, The Presidio, San Francisco, California 94129.

On the date below, at my place of business at San Francisco, California, a copy of the following document(s):

THIRD AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEY'S GENERAL ACT FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE; DEMAND FOR JURY TRIAL

was delivered to:

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☒ **ONLY BY ELECTRONIC TRANSMISSION:** Only by e-mailing the document to the persons at the e-mail address(es) listed pursuant to notice provided on July 8, 2020 that, during the COVID-19 pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

☐ **BY U.S. MAIL:** I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices.

☐ **BY FACSIMILE TRANSMISSION:** I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof.

☒ **BY SERVICE TRANSMISSION:** I caused the above documents to be electronically transmitted to the parties listed above by One Legal, a court-approved vendor for e-service.

☐ **BY ELECTRONIC TRANSMISSION:** I caused the above documents to be electronically transmitted to the parties listed above.

1 [] BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed
2 envelope. I caused such envelope(s) to be handed to our messenger service to be delivered by
hand to the above address(es).

3 [] BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I
4 delivered each of said envelopes by hand to the above address(es).

5 [] BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I
6 caused such envelope(s) to be delivered by overnight express service to the above address(es).

7 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on March 23, 2021, at San Francisco, California.

8 

9 Theodore Leeds Armstrong