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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

HOLLIE BALLARD, an individual, on behalf
of the State of California, as a private attorney
general, and on behalf of all others similarly
situated,

PLAINTIFF,

v.

RAMIN TAYANI M.D., a California
Corporation doing business as Tayani
Institute, West Coast Center for Surgeries,
Dermabare inside Lifetime Athletics and San
Diego Eye Care Center, and DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 30-2020-01172329-CU-OE-CXC

Assigned for all purposes to: Judge Peter Wilson
Dept: CX102

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) FAILURE TO PROVIDE OFF-DUTY
REST PERIODS TO AND/OR PAY REST
BREAK PREMIUMS (LABOR CODE §
226.7 AND IWC WAGE ORDER NO. 4);
(2) FAILURE TO PROVIDE OFF-DUTY
MEAL PERIODS TO AND/OR PAY MEAL
PERIOD PREMIUMS (LABOR CODE §§
226.7, 512, AND IWC WAGE ORDER NO.
4);
(3) FAILURE TO PROVIDE COMPLETE/
ACCURATE WAGE STATEMENTS IN
VIOLATION OF LABOR CODE § 226(a);
(4) FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION (LABOR
CODE §§201-203)
(5) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204);
(6) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2699, et seq., and 558).**

DEMAND FOR JURY TRIAL

1 Plaintiff Hollie Ballard (“Plaintiff”), on behalf of herself, the State of California as a
2 private attorney general, the aggrieved employees and all others similarly situated (hereinafter
3 “Class Members” and/or “aggrieved employees” as defined below), complains and alleges as
4 follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
7 class action pursuant to California Code of Civil Procedure § 382 and as a PAGA representative
8 action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public,
9 against Defendant Ramin Tayani Md. Inc, doing business as Tayani Institute, West Coast Center
10 for Surgeries, Dermabare inside Lifetime Athletics and San Diego Eye Care center (collectively,
11 “Defendant”) and DOES 1 to 50 (collectively, “Defendants”) for Defendants’ (1) failure to
12 provide off-duty rest breaks and/or pay missed rest break premiums; (2) failure to provide off-
13 duty meal periods and/or pay missed meal period premiums; (3) failure to provide complete and
14 accurate wage statements within one year prior to the filing of this Complaint; (4) failure to pay
15 all wages owed upon termination, based on the foregoing; (5) unfair business practices based on
16 the foregoing; and (6) PAGA and other penalties based on the foregoing. As a result of the
17 foregoing, Defendants have violated California statutory laws as described below.

18 2. The “Class Period” is designated as the period from four years prior to the filing of
19 this action through the date of class certification.. The PAGA period is the period from
20 September 19, 2019, i.e., one year prior to Plaintiff’s sending of her PAGA letter to the LWDA,
21 and ongoing (the “PAGA Period”). Defendants’ violations of California’s wage and hour laws
22 and unfair competition laws, as described more fully below, have been ongoing throughout the
23 Class Period and throughout the PAGA period and are ongoing.

24 **II. JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction over any and all causes of action
26 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
27 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
28 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted

1 arises under the laws of the State of California or is subject to adjudication in the courts of the
2 State of California.

3 4. This Court has personal jurisdiction over Defendants because Defendants have
4 caused injuries in the County of Orange and State of California through their acts, and by their
5 violation of the California Labor Code and California state common law. Defendants transact
6 millions of dollars of business within the state of California by operating several surgery centers.

7 5. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil
8 Procedure § 395. Defendants operate within California and do business within Orange County,
9 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
10 Defendants' employees within Orange County.

11 6. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C.
12 §1332, as Plaintiff is informed and believes the aggregate amount in controversy for Plaintiff and
13 the Class Members, including any attorneys' fees, does not exceed \$5,000,000.

14 **III. THE PARTIES**

15 **A. PLAINTIFF**

16 7. Plaintiff Hollie Ballard is a citizen of California, a resident of Orange County, and,
17 at all times relevant hereto, worked for Defendants in Orange County. Plaintiff was employed by
18 Defendants as an hourly, nonexempt employee from April 2020 to August 2020 as a clinical
19 coordinator and as part of the front office sales staff.

20 8. Plaintiff represents the state of California as well as a group of aggrieved
21 employees defined as: all individuals, including Plaintiff, who are or were employed by Ramin
22 Tayani Md. Inc, doing business as Tayani Institute, West Coast Center for Surgeries, Dermabare
23 inside Lifetime Athletics and San Diego Eye Care Center (collectively, "Defendants"), or their
24 predecessors or merged entities in California, who are or were classified as non-exempt, and who
25 worked at least one shift longer than 3.5 hours for Defendants at any time from September 19,
26 2019 and ongoing ("aggrieved employees").

27 9. Plaintiff also seeks to represent a class of employees defined as: all individuals ,
28 including Plaintiff, who are or were employed by Ramin Tayani Md. Inc, doing business as

1 Tayani Institute, West Coast Center for Surgeries, Dermabare inside Lifetime Athletics and San
2 Diego Eye Care Center (collectively, “Defendants”), or their predecessors or merged entities in
3 California who were classified as non-exempt, and who worked at least one shift longer than 3.5
4 hours for Defendants at any time from four years ago through the date of class certification (the
5 “Class” or “Class Members”).

6 10. Plaintiff, Class Members, and all aggrieved employees at all times pertinent
7 hereto, are, or were, employees of Defendants.

8 11. Upon information and belief, Plaintiff, Class Members and the aggrieved
9 employees are covered by California Industrial Welfare Commission Occupational Wage Order
10 No. 4-2001.

11 **B. DEFENDANTS**

12 12. Defendant Ramin Tayani Md. Inc, dba Tayani Institute, West Coast Center for
13 Surgeries, Dermabare inside Lifetime Athletics and San Diego Eye Care Center (collectively,
14 “Defendants”) is a California Corporation that does business in the State of California. Ramin
15 Tayani Md. owns and operates at least four surgical centers throughout Southern California,
16 specifically in Orange and San Diego county. Ramin Tayani Md. employed Plaintiff, Class
17 Members and the aggrieved employees within California. Ramin Tayani Md. has done and does
18 business throughout the State of California including Orange County.

19 13. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
22 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
24 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become
26 known.

27 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
28 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
2 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
3 employer and/or joint employer of Plaintiff and the other aggrieved employees.

4 **IV. FACTUAL BACKGROUND**

5 15. Plaintiff, Class Members, and the aggrieved employees are, and were at all times
6 pertinent hereto, classified as hourly, non-exempt employees by Defendants.

7 16. Plaintiff, Class Members, and the aggrieved employees consistently worked shifts
8 more than four (4) hours or a major fraction thereof, including shifts in excess of eight (8) hours.

9 17. Under IWC Wage Order 4-2001 an employer must authorize and permit all
10 employees to take ten (10) minute duty free rest periods for every major fraction of four (4) hours
11 worked. Labor Code § 226.7 provides “an employer shall not require an employee to work during
12 a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
13 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). *See Augustus v.*
14 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
15 employers must relieve employees of all duties and relinquish control over how employees spend
16 their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could
17 provide an on-duty rest period to employees who worked as security guards and further explained
18 “that employers [must] relinquish any control over how employees spend their break time, and
19 relieve their employees of all duties.” *Id.* at 273.

20 18. At all times pertinent hereto, and throughout the Class Period and the PAGA
21 Period, Defendants failed to have a lawful off-premises and duty-free rest period policy in place
22 that informed Plaintiff, the Class Members, and all aggrieved employees of their right to take rest
23 periods for shifts that were a major fraction of a four (4) hour work period and to make rest
24 breaks available to these employees.

25 19. Instead, Defendants’ written and uniform rest period policy applicable to all
26 employees advised Plaintiff, the Class Members, and all aggrieved employees to take rest breaks
27 on-site and to remain on duty during their rest periods. Specifically, Ramin Tayani MD’s
28 Employee Handbook, “All ten-minute rest breaks must be taken on **TI/WCCS/DB/SDECC**

1 jobsite premises. Your supervisor will coordinate your break periods.” See Exhibit A (relevant
2 except from the Employee Handbook).

3 20. In *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), the California
4 Supreme Court held that ABM’s on-call policy of requiring security guards to keep their radios
5 and pagers on at all times, and to remain vigilant and respond when needs arise, including during
6 rest breaks, violated its duty to provide duty-free rest breaks as required by § 226.7 and § 12 of
7 the applicable Wage Order. *Id.* at 260-61, 270.¹ With strong implications for the issue here, the
8 Court declared “. . . one cannot square the practice of compelling employees to remain at the
9 ready, *tethered by time and policy to particular locations or communication devices*, with the
10 requirement to relieve employees of all work duties and employer control during 10-minute rest
11 breaks.” *Augustus*, 2 Cal. 5th at 269 (emphasis added). Defendant’s on-premises rest period
12 policy tethers employees to their work locations expressly and more directly than the on-call rule
13 which as a practical matter disallowed a walk “five minutes out, five minutes back” but—unlike
14 Defendant’s policy—did not completely disallow employees from venturing outside and off-
15 premises. Imposing greater control over location during the rest periods than the on-call rule,
16 Defendant’s on-premises rest break policy is more clearly unlawful. Moreover, the Court’s use of
17 the disjunctive in *Augustus*—disapproving a rest break policy either requiring an employee to
18 remain tethered during rest breaks to particular communication devices *or* to particular
19 locations—is strong indication that Defendant’s policy prohibiting employees from leaving the
20 “Company premises” and directing them to take breaks in “Company-designated areas”
21 unlawfully tethers them to particular locations.

22 21. Defendant’s on premises rest break policy constitutes control over workers such
23 that the rest breaks are not duty-free. See *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968
24 (1995) and *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000), holding that California employers
25 exercise sufficient “control” over workers such that they are “on-duty” and must be paid for their

26
27 ¹ Notably, the wage order at issue in *Augustus*, IWC Wage Order No. 4-2001, contains identical language to the wage
28 order at issue in the immediate action, IWC Wage Order No. 7-2001. *Compare* Cal. Code Regs., tit. 8, § 11040,
subsection 12 *with* Cal. Code Regs., tit. 8, § 11070, subsection 12. The California Supreme Court in *Augustus* also
noted that IWC wage order provisions are interpreted liberally to effectuate the purpose of the Legislature and IWC,
which is the protection of employees. *Augustus*, 2 Cal. 5th at 262.

1 “hours worked” for all time during which the employer merely requires them to remain on its
2 premises, including for such time associated with meal breaks or during travel time on a company
3 bus, without any additional job duties. By way of background, the numerous IWC Wage Orders
4 all require California employers to pay employees no less than minimum wage for all hours
5 worked. *See e.g.*, IWC Wage Order No. 9, section 4(B). The phrase “hours worked” is defined as
6 “the time during which an employee is subject to the control of an employer and includes all the
7 time the employee is suffered or permitted to work, whether or not required to do so.” *Id.*, section
8 2(G). The California Court of Appeals has held that an employer’s policy of requiring an
9 employee to remain on premises for lunch periods transforms what would otherwise be a duty-
10 free, unpaid 30- minute meal period (*see* Section 11 of the various IWC Wage Orders) into paid,
11 on-duty time that counts as “hours worked” that is subject to the employer’s control for purposes
12 of the Wage Order. *See Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 977 (1995).

13 22. In *Bono Enterprises*, where employees at a manufacturing plant were required to
14 remain on premises during their 30-minute lunch break, during which time they were relieved of
15 all duties and permitted to eat or relax at the employer’s on-site cafeteria, the Court of Appeals
16 upheld the Labor Commissioner’s interpretation of IWC Order 1-89 (the predecessor order to
17 IWC Wage Order No. 1-2001), that employees were entitled to compensation for any such meal
18 period during which they were restricted to the employer’s premises. *Id.* at 977. The Court
19 noted: “When an employer directs, commands or restrains an employee from leaving the
20 workplace during his or her lunch hour and thus prevents the employee from using the time
21 effectively for his or her own purposes, ***that employee remains subject to the employer’s control.***
22 According to IWC Order 1-89, the employee must be paid.” *See Bono Enterprises*, 32 Cal. App.
23 4th at 977 (emphasis added).²

24 23. The *Bono* Court’s interpretation of “hours worked” was approved by the California
25 Supreme Court in *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000) (agricultural employees

26 ² *See also Brinker Restaurant Corp., v. Sup. Ct.*, 53 Cal. 4th 1004 (Cal. 2012) (agreeing with DLSE Opinion Letter
27 No. 1988.01.05, that states, “The Division has historically taken the position that unless employees are relieved of all
28 duties and are free to leave the premises, the meal period is considered hours worked.”); *Aguilar v. Association for Retarded Citizens*, 234 Cal.App.3d 21, 30 (1991) (employees should be compensated for the time they spend sleeping while on the employer's premises, even though they performed no work then).

1 were subject to employer control during time spent riding to and from fields when required to ride
2 in employer provided buses and thus such time was compensable under the applicable IWC Wage
3 Order). The California Supreme Court there noted that: “The two phrases [in Section 2(G) of the
4 Wage Order’s definition of “hours worked”] – “time during which an employee is subject to the
5 control of an employer” and “time the employee is suffered or permitted to work, whether or not
6 required to do so”—can also be interpreted as independent factors, each of which defines whether
7 certain time spent is compensable as “hours worked”. Thus, an employee who is subject to an
8 employer’s control does not have to be working during that time to be compensated under Wage
9 Order 14-80 [internal citation to *Bono* omitted].” *Morillion*, 22 Cal.4th at 582. Based on the
10 foregoing, the DLSE also has concluded that “...employees who were not paid for meal breaks
11 during which they were prohibited from leaving the employer’s premises, notwithstanding the
12 fact that they were relieved from all duty during those meal periods, are entitled to compensation
13 for their unpaid meal periods.” *See* DLSE Opinion letter, Jan. 12, 2001.³ That employees’
14 mandatory on-premises meal break time is considered “hours worked” that is subject to employer
15 control and thus compensable weighs heavily in favor of a reading of *Augustus*, that on-premises
16 rest breaks are also subject to employer control.

17 24. Notably, the DLSE has also disapproved of on-premises rest period policies. As
18 the state agency “empowered to enforce wage orders and state labor statutes,” the DLSE has been
19 recognized by the California Supreme Court as being “in a position to accumulate both
20 knowledge and experience relevant to the administration of wage orders”. *See Augustus*, 1 Cal.5th
21 at 267. “While its opinion letters are not controlling, they reflect the type of experience and
22 considered judgment that may properly inform our [the California Supreme Court’s] judgment.
23 *Id.* (citing *Yamaha Corp. v. State Board of Equalization*, 19 Cal. 4th 1, 14 (1998)). To share its
24 experience and expertise, the State of California’s Department of Industrial Relations and its
25 DLSE also maintain a website available for the public addressing various aspects of California’s
26 Labor Law, including “Rest Periods/Lactation Accommodation.” *See*

27
28 ³ DLSE opinion letters can be found here: <https://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm>, including the
cited letter: <https://www.dir.ca.gov/dlse/opinions/2001-01-12.pdf> (both links last checked on 7/9/19).

1 www.dir.ca.gov/dlse/faq_restperiods.htm.

2 25. Notably, on the DLSE's website, following a summary of California's rest break
3 laws, the DLSE expressly states that mandatory on-premises rest period policies violate
4 California's duty-free rest break laws. Specifically, following a summary of California's rest
5 break laws, the DLSE's website has a series of questions and answers, including: **"5. Q. Can my**
6 **employer require that I stay on the work premises during my rest period? A:** No, your
7 employer cannot impose any restraints not inherent in the rest period requirement itself.
8 In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme
9 Court held that the rest period requirement "obligates employers to permit-and authorizes
10 employees to take-off-duty rest periods. That is, during rest periods employers must relieve
11 employees of all duties and relinquish control over how employees spend their time." (citation
12 omitted). As a practical matter, however, if an employee is provided a ten- minute rest period, the
13 employee can only travel five minutes from a work post before heading back to return in time."
14 See www.dir.ca.gov/dlse/faq_restperiods.htm (Question 5).

15 26. The California Supreme Court's recent decision in *Frlekin v. Apple Inc.*, 8 Cal. 5th
16 1038 (Feb. 13, 2020), by its logic also indicates that an on-premises rest break policy do not pass
17 muster under California law. The Court in *Frlekin* reaffirmed its holding in *Morillion* that "[t]he
18 level of the employer's control over its employees, rather than the mere fact that the employer
19 requires the employees' activity, is determinative' concerning whether an activity is compensable
20 under the Wage Order's 'hours worked' control clause. *Frlekin v. Apple Inc.*, 8 Cal. 5th at 1056,
21 *quoting Morillion*, 22 Cal. 4th at 587. By that measure, the time spent by employees undergoing
22 theft-prevention-related bag searches after the end of their shifts was subject to the employer's
23 control and counted as "hours worked" and compensable. *Id.* at 1056-57.⁴ With unmistakable
24 implications for the issue here, the Court, again embracing *Bono*, stated: "[w]hen an employer
25 directs, commands *or restrains an employee from leaving the work place* . . . and thus prevents
26 the employee from using the time effectively for his or her own purposes, that employee remains

27 _____
28 ⁴ The Court adhered to its practice of construing wage orders "so as to promote employee protection", emphasizing that "'wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its remedial purposes' of protecting and benefiting employees." *Id.* at 1045-46 (citations omitted).

1 subject to the employer's control[and a]ccording to [the applicable Wage Order], that employee
2 must be paid.” *Frlekin*, 8 Cal. 5th at 1047, *quoting Bono*, 32 Cal. App. 4th at 975. (Emphasis
3 added). Time spent by Defendant's employees who are confined to the premises during rest
4 periods is no less subject to employer control than that spent by Apple employees after their shifts
5 while confined to the location for on-premises exit searches. Although the issue in *Frlekin* was
6 compensability of security check time, as opposed to whether there was sufficient “control”
7 during a break to trigger the employer's obligation to make a premium payment under Labor
8 Code § 226.7 for an on-duty rest break, the logic underlying the *Frlekin* decision applies with
9 equal and inexorable force to the rest break control analysis here.

10 27. In summary, the California appellate courts in *Bono*, *Morillion*, and *Frlekin* all
11 support the DLSE's and Plaintiff's position that policies unconditionally requiring employees to
12 remain on-premises during rest breaks are unlawful. *See Bono*, 32 Cal. App. 4th at 975 (“When
13 an employer directs, commands, or restrains an employee from leaving the work place during his
14 or her lunch hour and thus prevents the employee from using the time effectively for his or her
15 own purposes, that employee remains subject to the employer's control [and] must be paid.”)⁵;
16 *Morillion*, 22 Cal. 4th at 582 (holding that agricultural employees must be paid for mandatory
17 time spent riding to and from fields on employer buses, because “an employee who is subject to
18 an employer's control does not have to be working during that time to be compensated under [the
19 applicable Wage Order.]”); *Frlekin*, 8 Cal. 5th at 1056 (holding that employer's requirement of
20 on-premises exit searches, which were “enforced through threat of discipline[,]” are compensable
21 time under the Wage Order's “hours worked” control clause). No California Court of Appeals is
22 contrary to these decisions.

23 28. As a result of Defendants unlawful uniform rest break policy, Defendants did not
24 permit Plaintiff, the Class Members, and/or the aggrieved employees to leave the premises during
25 rest periods as required by Labor Code § 226.7 and Wage Order 4-2001. *Augustus*, 2 Cal. 5th at

26 ⁵ That employees' mandatory on-premises meal break time is considered “hours worked” that is subject to employer
27 control, and thus compensable pursuant to *Bono*, weighs heavily against a reading of *Augustus* that on-premises rest
28 breaks are somehow different and not subject to employer control, especially since the *Augustus* court stated that
employer's responsibilities relating to providing duty-free meal breaks and rest breaks are the same. *Augustus*, 2
Cal. 5th at 265.

1 269. In fact, Defendants required that Plaintiff, the Class Members, and the aggrieved employees
2 remain on-duty and on-site through their rest periods. Accordingly, as a result of its unlawful
3 uniform on-premises rest period policies, Defendants regularly and consistently failed to
4 authorize and permit Plaintiff, the Class Members, and all aggrieved employees to take Labor
5 Code and Wage Order compliant rest periods.

6 29. The *Brinker* Court explained in the context of rest breaks that employer liability
7 attaches from adopting an unlawful policy:

8 An employer is required to authorize and permit the amount of rest break time called
9 for under the wage order for its industry. If it does not—if, for example, it adopts a
10 uniform policy authorizing and permitting only one rest break for employees working a
seven-hour shift when two are required—***it has violated the wage order and is liable.***

11 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

12 30. Following *Brinker*, the Courts of Appeal have confirmed that liability for not
13 providing compliant rest or meal breaks arises when an employer adopts a uniform policy that
14 fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the
15 California Court of Appeal applied *Brinker*: “In *Faulkinbury I*, we concluded that even if
16 [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it
17 actually failed to provide a required off-duty meal break. *Brinker* leads us now to conclude
18 [defendant] would be liable upon a determination that [defendant]’s uniform on-duty meal break
19 policy was unlawful.” (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220 The
20 Court further explained: “the employer’s liability arises by adopting a uniform policy that violates
21 the wage and hour laws. Whether or not the employee was able to take the required break goes to
22 damages...” (*Ibid.* [citations omitted]; see also *Benton v. Telecom Network Specialists, Inc.*
23 (2013) 220 Cal. App. 4th 701, 728.)

24 31. Since Defendants did not offer Plaintiff, the Class Members, and the aggrieved
25 employees the opportunity to receive a compliant off-premises rest periods, “the court may not
26 conclude employees voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health*
27 *Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f an employer fails to provide legally compliant
28 meal or rest breaks, the court may not conclude employees voluntarily chose to skip those

breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”).

32. Further, even an employer who maintains an otherwise compliant rest period policy, “reminded their employees of their availability—and the importance—of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks” will still be liable for rest period violations if the employees were provided non-compliant rest periods. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff’d Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at *11 (E.D. Cal. Aug. 22, 2016); *rev. denied* by 9th Cir. Case No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016).

33. Here, again, Plaintiff, the Class Members, and the aggrieved employees were subject to a written and uniform policy applicable to all employees that required them to stay on-premises during their rest periods. As a result, neither Plaintiff, nor the Class Members, nor the aggrieved employees were ever provided with a rest period free from all duties, in violation of the Wage Order. Thus, any evidence mustered by Defendants that its employees nevertheless sometimes took rest breaks off-premises in violation of its policy would only go to potential damages, not to liability.

34. Further, as noted above, Ramin Tayani MD’s Employee Handbook, states in relation to meal periods, that “In order to facilitate the smooth flow of business, lunch breaks may be staggered and may change to meet the needs of **TI / WCCS / DB / SDECC**’s patients.”

35. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, under IWC Wage Order 4-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 4-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not

provided. Accordingly, for each day that Plaintiff, the Aggrieved Employees, and the Class Members did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 4-2001.

36. In addition, during the Class Period and the PAGA Period, Plaintiff, the Class Members, and all aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period or a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

37. Labor Code § 226(a)(1), (2), (5) and (9), requires employers semimonthly or at the time or each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the gross wages earned, the total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

38. From at least September 19, 2019 through the present, Defendants knowingly and intentionally failed to issue accurate and complete itemized wage statements in writing to Plaintiff, the Class Members, and all aggrieved employees that accurately indicate the gross wages earned, total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee because those wage statements did not include compensation for rest break premiums and meal break premiums, as required by Cal. Labor Code §§226.7.

39. Due to Defendants' failure to provide employees with lawful off-duty rest periods, and its improper on-duty rest period policy as detailed above, the wage statements issued by the Defendants to Plaintiff, the Class Members and the aggrieved employees further do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Class, and all aggrieved employees.

1 40. Plaintiff fully and completely exhausted her administrative remedies under PAGA
2 prior to proceeding with this action. On September 19, 2020, Plaintiff filed her PAGA Notice
3 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified
4 mail to Defendants setting forth the facts and theories of the violations alleged against
5 Defendants, as prescribed by Labor Code § 2698 *et seq.* On October 10, 2020, Plaintiff amended
6 her PAGA notice online with the Labor Workforce Development Agency (“LWDA”) and sent a
7 letter by certified mail to Defendants. As required by PAGA, Plaintiff submitted the \$75.00 filing
8 fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was
9 received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65)
10 calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to
11 commence and proceed with a civil action pursuant to Labor Code § 2699.

12 **III. CLASS ACTION ALLEGATIONS**

13 41. Plaintiff brings this action, on behalf of herself and all others similarly situated, as
14 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
15 composed of and defined as

16 all persons who are or were employed by Ramin Tayani Md. Inc, doing
17 business as Tayani Institute, West Coast Center for Surgeries, Dermabare
18 inside Lifetime Athletics and San Diego Eye Care center (collectively,
19 “Defendant”) or its predecessor or merged entities in the State of
20 California, who are or were classified as non-exempt, and who worked at
least one shift, for any affiliated entity longer than 3.5 hours at any time
from four years prior to the filing of this Complaint and ongoing.

21 42. This action has been brought and may properly be maintained as a class action
22 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
23 litigation, the proposed class is easily ascertainable, and Plaintiff, is a proper representative of the
24 Class:

25 a. Numerosity: The potential members of the Class as defined are so
26 numerous that joinder of all the members of the Class is impracticable. While the precise number
27 of Class Members has not been determined at this time, Plaintiff is informed and believe that
28 Defendants has, on average, during the Class Period employed over 60 Class Members in

1 California subject to Defendants' on-duty rest period policy. Due to employee turnover, the total
2 number of Class Members who are no longer employed by Defendants is estimated to be more
3 than 100. The Class Members are dispersed throughout California. Joinder of all members of the
4 proposed classes is therefore not practicable.

5 b. Commonality: There are questions of law and fact common to Plaintiff and
6 the Class that predominate over any questions affecting only individual members of the Class.
7 These common questions of law and fact include, without limitation:

8 i. Whether Defendants violated Labor Code section 226.7 and Section 12 of
9 Wage Order 4-2001 by not relieving the Class Members of all duties during their statutorily
10 mandated rest periods;

11 ii. Whether Defendants violated Labor Code section 226.7 failing to pay one
12 hour of premium pay to each member of the Class for each day that an off-duty rest break was not
13 provided in California during the Class Period;

14 iii. Whether Defendants violated Labor Code section 226.7, 512, and Section 11
15 IWC Wage Order 4-2001 by not relieving the Class Members of all duties during the statutorily
16 mandated meal periods;

17 iv. Whether Defendants violated Labor Code section 226.7 failing to pay one
18 hour of premium pay to each member of the Class for each day that an off-duty meal period was not
19 provided in California during the Class Period;

20 v. Whether Defendants failed to provide Plaintiff and the members of the
21 Class complete wage statements with information included about their total hours worked, the
22 gross wages earned, the net wages paid and premium payments for non-compliant rest periods,
23 and the name and address of the legal entity and during each pay period in violation of Labor
24 Code Section 226(a) and 226.3;

25 vi. Whether Defendants failed to pay all wages owed to Plaintiff and the
26 members of the Waiting Time Penalty Class upon termination in violation of Cal. Labor Code
27 §§201-203.

28 vii. Whether Defendants engaged in an unfair practice and violated section

1 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
2 Class with rest periods free of all duties;

3 viii. Whether Defendants engaged in an unfair practice and violated section
4 17200 et seq. of the California Business and Professions Code by failing to provide pay rest break
5 premiums for all on-duty rest breaks taken by members of the Class in violation of Section 12 of
6 IWC Wage Order No. 4;

7 ix. Whether Plaintiff and the Class are entitled to restitution under Business
8 and Professions Code § 17200 et seq.;

9 x. The proper formula(s) for calculating damages, interest, and restitution
10 owed to Plaintiff and the Class Members; and

11 xi. The nature and extent of class-wide damages.

12 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
13 Plaintiff and Class Members sustained injuries and damages, and were deprived of property
14 rightly belonging to them, arising out of and caused by Defendants' common course of conduct in
15 violation of law as alleged herein, in similar ways and for the same types of expenses.

16 d. Adequacy of Representation: Plaintiff is a member of the Class and will
17 fairly and adequately represent and protect the interests of the Class and Class Members.
18 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who
19 represents Plaintiff are competent and experienced in litigating large wage and hour class actions,
20 including numerous cases virtually identical to this one, and other employment class actions, and
21 will devote sufficient time and resources to the case and otherwise adequately represent the Class
22 and Class Members.

23 e. Superiority of Class Action: A class action is superior to other available
24 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
25 Members is not practicable, and questions of law and fact common to the Class predominate over
26 any questions affecting only individual members of the Class. Each Class Member has been
27 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
28 practices as described herein. Certification of this case as a class action will allow those similarly

1 situated persons to litigate their claims in the manner that is most efficient and economical for the
2 parties and the judicial system. Certifying this case as a class action is superior because it allows
3 for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining
4 its unlawful compensation policies and will thereby effectuate California’s strong public policy of
5 protecting employees from deprivation or offsetting of compensation earned in their employment.
6 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
7 or most Class Members to bring individual actions to recover monies unlawfully withheld from
8 their lawful compensation due from Defendants, due to the relatively small amounts of such
9 individual recoveries relative to the costs and burdens of litigation.

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PROVIDE OFF-DUTY REST PERIODS**
12 **AND PAY MISSED REST PERIOD PREMIUMS**
13 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 4-2001]**
14 **On behalf of Plaintiff and the Class Against All Defendants**

15 43. Plaintiff re-alleges and incorporates by reference each and every allegation set
16 forth in the preceding paragraphs.

17 44. The actionable period for this cause of action is three years prior to the filing of
18 this Complaint through the present, and on-going until the violations are corrected, or the class is
19 certified.

20 45. Under IWC Wage Order 4-2001 an employer must authorize and permit all
21 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
22 worked. Labor Code § 226.7 provides “an employer shall not require an employee to work
23 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
24 regulation, standard, or order of the Industrial Welfare Commission.” By operation of law,
25 Defendants had a duty to provide Plaintiff and Class with rest periods completely free of all
26 duties, and enable Plaintiff and the Class to leave the worksite during those rest periods if they so
27 desired. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that
28 “during rest periods employers must relieve employees of all duties and relinquish control over
how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s

1 assertion that it could provide an on-duty rest period to employees who worked as security guards
2 and further explained “that employers [must] relinquish any control over how employees spend
3 their break time, and relieve their employees of all duties.” *Id.* at 273. But in violation of §226.7,
4 and Wage Order 4-2001, Defendants did not provide Plaintiff, the Class Members and the
5 Aggrieved Employees with rest periods completely free of all duties, since they maintained
6 control by virtue of their on-premises rest break policy, nor did Defendants’ written policy allow
7 or authorize Plaintiff, the Aggrieved Employees, or the Class Members to leave the worksite
8 during any rest period.

9 46. By way of their policies requiring employees to stay on site during their shifts, and
10 stay on-call during their rest periods, Defendants failed to provide Plaintiff and the Class with
11 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
12 worked. Specifically, Defendant failed to have a lawful rest period policy in place that informed
13 Plaintiff and the Class of their right to take duty-free rest periods for shifts that were a major
14 fraction of a four (4) hour work period and to make duty-free rest breaks available to these
15 employees. Further, Defendants did not permit Plaintiff or the Class to leave the premises during
16 rest periods as required by Labor Code § 226.7 and Wage Order 5-2001 and in violation of
17 *Augustus*, 2 Cal. 5th at 269. Accordingly, as a result of its rest period policies, Defendants
18 regularly and consistently failed to authorize and permit Plaintiff and the Class to take compliant
19 off duty rest periods.

20 47. Moreover, it was often impossible for Plaintiff and the Class to take a timely rest
21 period because of Defendants’ policy and practice of understaffing worksites. As a result of
22 Defendants’ understaffing policies and practices, Plaintiff and the Class were required to work
23 shifts without being able to receive their timely rest breaks (and, of course, all such breaks were
24 required to be taken on premises per the written policies). On these shifts, in accordance with
25 Defendants’ policies, Plaintiff and the Class members were not relieved of their duties and were
26 required to stay onsite.

27 48. In addition to failing to authorize and permit compliant rest periods, and instead
28 requiring on-premises rest breaks, Plaintiff and the Class were not compensated with one (1)

1 hours' worth of pay at their regular rate of compensation when they were not provided with a
2 compliant rest period in accordance with Labor Code § 226.7(b) and IWC Wage Order 4-2001
3 Section 12(B).

4 49. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
5 provided off duty rest periods, and are entitled to recovery under Cal. Labor Code §226.7 in the
6 amount of one additional hour of pay at the employee's regular rate of compensation for each
7 work period during each day in which Defendants failed to provide duty-free rest periods as
8 required by California law.

9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO PROVIDE MEAL BREAKS**
11 **AND PAY MISSED MEAL BREAK PREMIUMS**
12 **[Cal. Labor Code §§ 226.7, 512; Section 11 Of IWC Wage Order No. 4)]**
13 **On Behalf of Plaintiff and the Class Against All Defendants**

14 50. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 51. At all times relevant herein, Section 11050 of 8 California Code of Regulations
16 provided in relevant part:

17 A. No employer shall employ any person for a work period of more than five
18 (5) hours without a meal period of not less than 30 minutes, except that when a
19 work period of not more than six (6) hours will complete the day's work the meal
20 period may be waived by mutual consent of the employer and the employee.

21 B. An employer may not employ an employee for a work period of more than
22 ten (10) hours per day without providing the employee with a second meal period
23 of not less than 30 minutes, except that if the total hours worked is no more than
24 12 hours, the second meal period may be waived by mutual consent of the
25 employer and the employee only if the first meal period was not waived.

26 C. Unless the employee is relieved of all duty during a 30-minute meal period,
27 the meal period shall be considered an "on duty" meal period and counted as time
28 worked. An "on duty" meal period shall be permitted only when the nature of the
work prevents an employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is agreed to. The
written agreement shall state that the employee may, in writing, revoke the
agreement at any time.

D. If an employer fails to provide an employee a meal period in accordance
with the applicable provisions of this order, the employer shall pay the employee
one (1) hour of pay at the employee's regular rate of compensation for each
workday that the meal period is not provided.

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

10 53. California Labor Code Section 226.7 requires an employer to pay an additional
11 hour of compensation for each meal period the employer fails to provide in accordance with the
12 applicable statute or Industrial Welfare Commission Wage Order.

13 54. During Plaintiff's employment, Defendants failed to provide Plaintiff and other
14 members of the Class with meal periods in accordance with the applicable Industrial Welfare
15 Commission Wage Order and California Labor Code Sections 226.7 and 512. Specifically,
16 Defendants violated Labor Code § 512 and IWC Wage Order 4-2001 § 11 by requiring Plaintiff
17 and the Class Members to take their meal periods on-site and on-call, and thus were not relieved
18 of all duties during their meal periods.

19 55. Pursuant to California Labor Code Section 226.7, Plaintiff and other members of
20 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal
21 period, in a sum to be proven at trial.

22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**
24 **[Cal. Labor Code §§ 226 And 226.3]**
25 **On Behalf of Plaintiff and Wage Statement Subclass Members Against All Defendants**

26 56. Plaintiff re-alleges and incorporates by reference each and every allegation set
27 forth in the preceding paragraphs.

28 57. The actionable period for this cause of action is one year prior to the filing of this
Complaint through the present, and on-going until the violations are corrected, or the subclass of

1 class members who worked during the statute of limitations applicable to this claim, is certified.

2 58. Section 226(a) of the California Labor Code provides, in relevant part:

3 Every employer shall.... furnish each of his or her employees...an accurate
4 statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, except for any employee whose compensation is solely based in a salary
6 and who is exempt from payment of overtime under subdivision (a) of Section 515
7 or any applicable order of the Industrial Welfare Commission, (3) the number of
8 piece-rate units earned, and any applicable piece rate if the employee is paid on a
9 piece-rate basis, (4) all deductions, provided that all –deductions made on written
10 orders of the employee may be aggregated and shown as one item, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and only the last four digits of his or her social security
13 number or an employee identification number other than a social security number,
14 (8) the name and address of the legal entity that is the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the corresponding
16 number of the hours worked at each hourly rate by the employee...

17 59. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay
18 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to
19 exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
20 which the employer fails to provide accurate itemized statements to the employee causing the
21 employee to suffer injury.

22 60. Due to Defendants’ failure to provide employees with lawful off-duty rest periods,
23 late meal periods, or pay Plaintiff and the Class Members rest period premiums and meal period
24 premiums, as detailed above, the wage statements issued by Defendants do not indicate the
25 correct amount of gross wages earned, total hours worked, net wages earned, or the applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at
27 each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

28 61. Defendants’ failure to provide Plaintiff and Class Members with accurate itemized
wage statements during the Class Period has caused Plaintiff and Class Members who worked
within the actionable period for this cause of action (the “Subclass Members”) to incur economic
damages in that they were not aware that they were owed and not paid compensation for their
time spent on statutory rest breaks. *See Cicairos v. Summit Logistics*, 133 Cal. App. 4th 949, 954
 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so

1 that the employee must perform arithmetic computations to determine the total hours worked
2 during the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal*
3 *Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California
4 Labor Code by not including, inter alia, total hours worked giving rise to claims under both
5 Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949,
6 960-961 (2005) (reversing summary judgment for defendants where wage statements did not
7 “give an accurate report of the hours plaintiff worked, at least not on its face”); Cal. Labor Code §
8 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section
9 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the
10 gross or net wages earned by the employee during the pay period).

11 62. As a result of Defendants’ failure to issue accurate and complete itemized wage
12 statements to Plaintiff and Class Members in violation of section 226(a) of the California Labor
13 Code, Plaintiff Class Members who worked for Defendants within the one year preceding the
14 filing of this Complaint are each entitled to recover an initial penalty of \$50, and subsequent
15 penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 for each
16 member of the Class, including Plaintiff, from Defendants pursuant to section 226(e) of the
17 California Labor Code.

18 **FOURTH CAUSE OF ACTION**
19 **WAITING TIME PENALTIES FOR**
20 **FAILURE TO PAY WAGES DUE ON TERMINATION**
21 **[Cal. Labor Code §§ 201-203]**

22 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants**

23 63. Plaintiff re-alleges and incorporates by reference each and every allegation set
24 forth in the preceding paragraphs.

25 64. The actionable period for this cause of action is three years prior to the filing of
26 this Complaint through the present, and on-going until the violations are corrected, or the class is
27 certified.

28 65. Sections 201 and 202 of the California Labor Code require Defendants to pay all
compensation due and owing to former sales representatives in the Class during the actionable
period for this cause of action at or around the time that their employment is or was terminated or

1 ended.

2 66. Section 203 of the California Labor Code provides that if an employer willfully
3 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201
4 and 202, then the employer is liable for penalties in the form of continued compensation up to
5 thirty (30) work days.

6 67. Defendant willfully failed to pay Plaintiff and other members of the Waiting Time
7 Penalty Subclass (i.e. those members of the class whose employment with Defendant ended
8 during the actionable period for this cause of action) who are no longer employed by Defendants,
9 rest period premiums for their on-duty rest periods and meal period premiums for their on-duty
10 meal periods, upon termination or separation from employment with Defendant as required by
11 California Labor Code §§ 201 and 202.

12 68. Further, Plaintiff and the Waiting Time Penalty Subclass are entitled to waiting
13 time penalties for Defendants' failure to pay rest period premiums and meal period premiums. *See*
14 *e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying
15 the CPS's motion for summary judgment on the plaintiff's claim for waiting time penalties based
16 upon the failure to provide rest period premiums and finding that the California Court of Appeals
17 decision in *Ling vs. P.F. Chang's China Bistro, Inc.* 245 Cal. App. 4th 1242 (2016) "concerned
18 only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action
19 brought for the non-payment of wages under section 218.5'"); *Brewer v. Gen. Nutrition Corp.*
20 (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying CPS's motion for summary
21 judgment because "the premium payments due under section 226.7 are to be considered "wages"
22 for purposes of sections 203 and 226.7"]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
23 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding "Plaintiff section 203 claim
24 for failure to pay wages...can be based on amounts owed under section 226.7.".)

25 69. As a result, Defendants are liable to Plaintiff and other members of the Waiting
26 Time Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff
27 and each such Class member pursuant to California Labor Code § 203. See, e.g., DLSE Manual,
28 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover

1 waiting time penalties).

2 **FIFTH CAUSE OF ACTION**
3 **UNFAIR COMPETITION LAW VIOLATIONS**
4 **[Bus. & Prof. Code §§ 17200]**
5 **On Behalf of Plaintiff and the Class Against All Defendants**

6 70. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

7 71. Section 17200 of the California Business & Professions Code prohibits any
8 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
9 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
10 action for violation of the UCL. Such a person may bring such an action on behalf of herself and
11 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

12 72. Under section 17208 of the California Business and Professions Code, the statute
13 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
14 for this cause of action is four years prior to the filing of this Complaint through the present, and
15 on-going until the violations are corrected, and/or the class is certified.

16 73. Section 90.5(a) of the Labor Code states that it is the public policy of California to
17 enforce vigorously minimum labor standards in order to ensure employees are not required to
18 work under substandard and unlawful conditions, and to protect employers who comply with the
19 law from those who attempt to gain competitive advantage at the expense of their workers by
20 failing to comply with minimum labor standards.

21 74. As a direct and proximate result of Defendants’ unlawful business practices,
22 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
23 its unlawful, unfair, and/or fraudulent acts and practices.

24 75. Plaintiff and similarly situated Class Members are entitled to monetary relief
25 pursuant to Business & Professions Code § 17203 and 17208 for all unpaid wages due and
26 interest thereon, from at least four years prior to the filing of this Complaint through the date of
27 such restitution, at rates specified by law. Defendants should be required to disgorge all the
28 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members,

1 from whom they were unlawfully taken.

2 76. Through its action alleged herein, Defendants have engaged in unfair competition
3 within the meaning of section 17200 of the California Business & Professions Code, because
4 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by
5 wrongfully denying them wages and/or penalties due for rest period premiums and meal period
6 premiums and therefore was substantially injurious to Plaintiff and the Class Members.

7 77. Defendants engaged in unfair competition in violation of Section 17200 *et seq.* of
8 the California Business & Professions Code by violating section 226.7 of the California Labor
9 Code, and Section 12 of the Wage Order No. 4-2001.

10 78. Defendants' course of conduct, act and practice in violation of the California laws
11 mentioned above constitute independent violations of Sections 17200 *et seq.* of the California
12 Business & Professions Code.

13 79. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
14 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

15 80. Plaintiff has assumed the responsibility of enforcement of the laws and public
16 policies specified herein by suing on behalf of themselves and other similarly situated Class
17 Members previously or presently employed by Defendants. Plaintiff's success in this action will
18 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
19 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
20 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

21 **SIXTH CAUSE OF ACTION**
22 **FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.* FOR**
23 **VIOLATIONS OF LABOR CODE §§226, 226.3, 226.7, 512, and 201-203; as well as**
24 **Section 1198 and WAGE ORDER 4-2001**
On Behalf of Plaintiff and All Aggrieved Employees Against Defendant Ramin
Tayani MD.

25 81. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
26 incorporates by reference all previous paragraphs.

27 82. Based on the above allegations incorporated by reference, Ramin Tayani MD
28 violated Labor Code §§ 226, 226.3, 226.7, 512, 201-203, as well as IWC Wage Order 4-2001.

1 83. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
2 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
3 trial subject to the following formula:

4 \$100 for the initial violation per employee per pay period; and

5 \$200 for each subsequent violation per employee per pay period.

6 These penalties will be allocated 75% to the Labor Workforce Development Agency and
7 25% to the affected employees.

8 84. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
9 be violated...any provision regulating hours and days of work in any order of the Industrial
10 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
11 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
13 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
16 employee.” As a result of the faulty rest period policies and practices described in detail in the
17 paragraphs above, Plaintiff and the other aggrieved employees are entitled to recover penalties
18 and wages under Labor Code § 558. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App.
19 4th 1112 (2012).

20 85. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition to any civil
21 penalty allowable under the law, rest and meal period premiums, and any wages associated with
22 working off-the-clock related to Ramin Tayani MD.’s policy of only providing on-duty rest and
23 meal periods, in violation of Labor Code sections 226.7 and 512, and IWC Wage Order No. 4-
24 2001, sections 11 and 12.

25 86. In addition, as set forth above, Ramin Tayani MD. failed to provide Plaintiff and
26 all aggrieved employees with accurate itemized wage statements in compliance with Labor Code
27 § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
28 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)

1 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
2 for each violation in a subsequent citation, for which the employer fails to provide the employee a
3 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

4 87. Further, Plaintiff, as an aggrieved employee, need not demonstrate or prove that
5 Ramin Tayani MD.’s conduct in refusing to provide accurate and itemized wage statements was
6 knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, (2017) 15 Cal. App. 5th 773,
7 788, (“Consistent with the PAGA statutory framework and the plain language and legislative
8 history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of
9 section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements
10 of section 226(e)(1).”); *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014)
11 (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section
12 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
13 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one
14 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
15 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
16 (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under §
17 2699(f) of PAGA.”).⁶

18 88. As a result of the acts alleged above, Plaintiff and the aggrieved employees seek
19 penalties under Labor Code § 2699, et seq. because of Ramin Tayani MD.’s violation of Labor
20 Code §§ 226, 226.3, 226.7, 512, as well as IWC Wage Order 4-2001.

21 ///

22 ⁶ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1,
23 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code §
24 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under PAGA.”) *Pelton v.*
25 *Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 (“[T]he Court
26 rejects CPS’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal. Labor Code § 2699, ‘any provision
27 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
28 Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
herself or herself and other current or former employees.’ Sections 2699.5 and 2699.3(a) provide that such a claim
may be brought for a violation of § 226(a)”); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal.,
July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 (“It is undisputed that GAT’s paychecks do not indicate
the applicable hourly rate of pay for the employee’s regular rate, overtime rate, or double-time rate of pay...The
failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section
2699(f) penalties are available.”).

RELIEF REQUESTED

Wherefore, Plaintiff, on behalf of herself and the members of the Class, pray for judgment against Defendants as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code § 226.7, and Section 12 of IWC Wage Order No. 4-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members for an hour of pay for each day that an off-premises rest period was not provided in California during the Class Period;

3. On the Second Cause of Action:

a. A declaratory judgment that Defendants have violated California Labor Code §§ 226.7, 512, and Section 11 of IWC Wage Order No. 4-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members for an hour of pay for each day that a compliant meal period was not provided in California during the Class Period;

4. On the Third Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code §§ 226 and 226.3 by issuing inaccurate and/or incomplete wage statements;

b. An award to Plaintiff and Class Members of \$50 for each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees.

5. On the Fourth Cause of Action

a. A declaratory judgment that Defendant violated California Labor Code §§ 201-203;

b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days'

1 wages per waiting time penalty subclass Class Member.

2 6. On the Fifth Cause of Action:

3 a. That the Court find and declare that Defendants violated the UCL and
4 committed unfair and unlawful business practices by failing to provide Plaintiff and the Class
5 members with off-duty rest and meal periods, and/or rest and meal period premiums, as required
6 by Cal. Labor Code §226.7;

7 b. Restitution, including, but not limited to, the relief permitted by sections
8 226.7 of the California Labor Code (i.e., meal and rest period premiums);

9 7. On the Sixth Cause of Action:

10 a. A civil penalty against Ramin Tayani MD in the amount of \$100 for the
11 initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
12 California Labor Code for Plaintiff and for the aggrieved employees during all of the pay periods
13 in the PAGA Period;

14 b. An award of reasonable attorney's fees against Ramin Tayani MD as
15 specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in
16 connection with the PAGA claims;

17 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
18 connection with Plaintiff's and aggrieved employees' PAGA claim against Defendant Ramin
19 Tayani MD as provided for in Labor Code § 2699(g)(1);

20 8. All other relief as this Court deems proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

23 Dated: November 30, 2020

ACKERMANN & TILAJEF, P.C.
EMPLOYMENT RIGHTS LAW GROUP, APC

24
25 By: 

Craig J. Ackermann, Esq.

26 Amir Seyedarshi, Esq.

27 Attorneys for Plaintiff, the Class and the Aggrieved
28 Employees

EXHIBIT A

Tayani Institute (TI)
West Coast Center for Surgeries (WCCS)
DERMABARE inside LifeTime Athletics
(DBLTF)
San Diego Eye Care Center (SDECC)



Employee Handbook

Revised 7/2/19

The Practice hours for work at **TI / WCCS / DB / SDECC** generally are 8:00 a.m. to 6:30 p.m.

If your work hours are different, your supervisor will explain your starting and ending times.

WORK HOURS AND MEAL PERIODS (Cont.)

(Nonexempt Employees)

Rest and Meal Periods:

TI / WCCS / DB / SDECC provides non-managerial employees a rest period of ten (10) minutes “net” rest time per four (4) hours worked or major fraction thereof, and which insofar as practicable shall be in the middle of each work period. However, the Practice generally will not authorize a rest period for employees whose total daily work time is less than three and one-half (3 ½) hours. Rest periods are counted as hours worked, and thus, employees are not required to record their rest periods on their time records. Rest breaks may not be combined with or added on to meal breaks nor may they be used to come to work ten (10) minutes late or leave ten (10) minutes early. All ten-minute rest breaks must be taken on **TI / WCCS / DB / SDECC** jobsite premises. Your supervisor will coordinate your break periods.

All non-managerial employees who work five or more hours in a day are required to take a thirty minute meal break. Certain exceptions to the rule exist based on the number of hours worked and/or the nature of the employee’s duties, but exceptions are uncommon, and you must have written authorization from your supervisor if you will not be taking a meal break. Employees taking their meal breaks must clock in and out when they begin and end their meal periods.

Your supervisor will usually assign your lunch period. In order to facilitate the smooth flow of business, lunch breaks may be staggered and may change to meet the needs of **TI / WCCS / DB / SDECC**’s patients.

PAYROLL MANAGEMENT

Time Keeping

(Nonexempt and exempt employees)

All employees are required to maintain time keeping records. Our practice uses ADP EZLabor system to keep those records. It is your responsibility to clock in and out whenever you leave the building, when you report for work, or when you leave at the end of your assigned shift. If you are not paid for a meal period, you must clock out before you leave for your meal period and clock back in **ONLY** when you are ready to begin work. Clocking back in before you have concluded your meal is strictly forbidden. As a nonexempt employee your pay is computed on the basis of accurate time records that the practice must keep. Therefore, accurate time keeping is mandatory.

Failure to clock in or out can result in errors in the payment of your wages especially if you are an hourly employee. Any repeated failure to record your time as required by various state and federal wage and hour laws and practice policy can result in disciplinary action up to and including dismissal. Clocking in or out for another employee, having another employee sign in or out for you, or in any way falsifying/altering or tampering with ANY time record(s), is strictly prohibited and will result in disciplinary action up to and including discharge.

Payday

Payday for **TI / WCCS / DB / SDECC** employees occurs bi-weekly on **Friday**.

Payroll Week, State/Federal Reporting

For state and/or federal payroll audit purposes only, **TI / WCCS / DB / SDECC** has established its regular payroll week, from 12:00am Sunday to the following Sunday 12:00am. This is considered to be a seven (7) consecutive day period as required by law.

New Hire Paperwork

Upon your initial date of hire you must complete all New Hire Forms in their entirety. You will also be asked to provide the following;

- a valid drivers’ license & proof of automobile insurance coverage for business needs