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[Additional counsel on following page]

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

JUAN GONZALEZ, individually and on behalf
of other individuals similarly situated,

Plaintiff,

v.

LOS ANGELES JEWISH HOME FOR THE
AGING, a California corporation; EISENBERG
VILLAGE OF THE LOS ANGELES JEWISH
HOME FOR THE AGING; a California
corporation; and DOES 1-100 inclusive,

Defendants.

CASE NO. 20STCV35976

Assigned to Hon. Elihu Berle, Dept. 6

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Failure to Pay all Wages in Violation of California Labor Code §§ 1194, 1194.2, 1197, 1197.1;**
- 2. Failure to Pay All Overtime in Violation of California Labor Code §§ 510, 1194;**
- 3. Failure to Provide Meal Breaks;**
- 4. Failure to Provide Rest Breaks;**
- 5. Failure to Pay all Wages at Termination in Violation of California Labor Code §§ 201-203;**
- 6. Failure to Furnish an Accurate Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226;**
- 7. Failure to Reimburse Business Expenses; and**
- 8. Violations of California Business & Professions Code §§ 17200, et seq.**
- 9. Violation of the Private Attorneys General Act, California Labor Code §§ 2698, et seq.**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

12/03/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Molinar Deputy

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Attorneys for Plaintiff, JUAN GONZALEZ, individually
and on behalf of other individuals similarly situated

1 Plaintiff JUAN GONZALEZ, (hereinafter referred to as “Plaintiff”), hereby submits his First
2 Amended Class Action Complaint (“Complaint”) against Defendants LOS ANGELES JEWISH
3 HOME FOR THE AGING, EISENBERG VILLAGE OF THE LOS ANGELES JEWISH HOME
4 FOR THE AGING, BRANDMAN CENTERS FOR SENIOR CARE, INC., JHA GERIATRIC
5 SERVICES, INC., GRANCELL VILLAGE OF THE LOS ANGELES JEWISH HOME FOR THE
6 AGING, ANNENBERG SCHOOL OF NURSING, and JHA WEST 16 LLC and DOES 1-100
7 (hereinafter collectively referred to as “Defendants”) on behalf of himself and the class of all other
8 similarly situated current and former employees of Defendants. Plaintiff brings this action upon
9 information and belief, except as to his own actions, the investigation of his counsel, and the facts
10 that are a matter of public record, as follows:

11 **INTRODUCTORY FACTUAL ALLEGATIONS**

12 1. This is a class action and representative action challenging systemic illegal
13 employment practices resulting in violations of the California *Labor Code*, including pursuant to the
14 Private Attorneys General Act (“PAGA”), California Labor Code §§ 2699, *et seq.*, and California
15 *Business and Professions Code* against employees of Defendants.

16 2. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class, and
17 on behalf of the state of California and all other similarly situated aggrieved employees, as a result
18 of employment policies, practices and procedures more specifically described below, which violate
19 the California *Labor Code*, including the PAGA, and the orders and standards promulgated by the
20 California Department of Industrial Relations, Industrial Welfare Commission, and Division of
21 Labor Standards. Said employment policies, practices and procedures are generally described as
22 follows:

- 23 a. Failure to pay Plaintiff and the members of the Plaintiff Class, including other
24 aggrieved employees, all wages pursuant to California *Labor Code* §1194;
- 25 b. Failure to pay all wages owed to Plaintiff and members of the Plaintiff Class,
26 including other aggrieved employees, due to Defendants’ rounding of hours;
- 27 c. Failure to pay all wages owed to Plaintiff and members of the Plaintiff Class,
28 including other aggrieved employees, due to Defendants’ failure to correctly

1 calculate overtime;

2 d. Failure to provide Plaintiff and members of the Plaintiff Class, including other
3 aggrieved employees, the opportunity for compliant meal periods;

4 e. Failure to permit Plaintiff and members of the Plaintiff Class, including other
5 aggrieved employees, to take compliant rest periods;

6 f. Failure to properly reimburse Plaintiff and members of the Plaintiff Class,
7 including other aggrieved employees, for reasonable business expenses incurred
8 (California *Labor Code* § 2802);

9 g. Failure to pay Plaintiff and members of the Plaintiff Class including other
10 aggrieved employees, all wages owed at termination; and

11 h. Failure to provide Plaintiff and members of the Plaintiff Class, including other
12 aggrieved employees, with accurate itemized wage statements in violation of
13 California *Labor Code* § 226.

14 3. Plaintiff is informed and believes, and based thereon alleges, that among other things
15 Defendants have engaged in a system of willful violations of the California *Labor Code* and
16 California *Business and Professions Code*, and applicable IWC wage orders by creating and
17 maintaining policies, practices and customs that knowingly deny employees the above stated rights
18 and benefits.

19 4. The policies, practices and customs of Defendants described above and below have
20 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
21 routinely adhere to the structures of the California *Labor Code*, and California *Business and*
22 *Professions Code*.

23 5. This matter is brought as a class action pursuant to California *Code of Civil*
24 *Procedure* §382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically
25 below, but which is comprised, generally, of all former and current employees of Defendants who
26 hold or held the job positions which Defendants classified as “non-exempt” at any of Defendants’
27 facilities in California and throughout the United States.

6. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on his own behalf and on behalf of the members of the Plaintiff Class

7. This Complaint further alleges that Defendants have violated and continue to violate provisions of the California *Labor Code* and wage orders promulgated by the Industrial Welfare Commission (“IWC Wage Orders”), including, but not limited to, California *Labor Code* §§ 200, 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 2802 and thus Plaintiff brings a Representative Action on behalf of all other similarly situated aggrieved employees under the PAGA.

8. The California Plaintiff “Class Period” is defined as from April 5, 2017 through November 19, 2021. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

9. The “PAGA Period” is defined as September 18, 2019 to November 19, 2021.

10. The actions of Defendants are in violation of the California *Labor Code* as well as the wage orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* § 17200, et seq. (Unfair Practices Act).

11. The policies, practices and customs of Defendants described above and herein have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

JURISDICTION AND VENUE

12. On information and belief, Defendants are either a citizen of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

13. Venue is proper in Los Angeles County because the acts which gave rise to this litigation occurred in this county and Defendants do business in Los Angeles County.

THE PARTIES

14. Plaintiff JUAN GONZALEZ (“Plaintiff”) is a resident of Los Angeles County, in the State of California. Plaintiff was employed by Defendants in Reseda, California from approximately May 2014, through August 20, 2020. Plaintiff was employed as a “Maintenance Tech.”

15. Defendant LOS ANGELES JEWISH HOME FOR THE AGING, is a California corporation doing business in California.

16. Defendant EISENBERG VILLAGE OF THE LOS ANGELES JEWISH HOME FOR THE AGING; is a California corporation that conducts business in California.

17. Defendant BRANDMAN CENTERS FOR SENIOR CARE, INC., is a California corporation that conducts business in California.

18. Defendant JHA GERIATRIC SERVICES, INC., is a California corporation that conducts business in California.

19. Defendant GRANCELL VILLAGE OF THE LOS ANGELES JEWISH HOME FOR THE AGING, is a California corporation that conducts business in California.

20. Defendant ANNENBERG SCHOOL OF NURSING, is a California corporation that conducts business in California.

21. Defendant JHA WEST 16 LLC (“JHA”) is a California corporation that conducts business in California.

22. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

23. At all times herein mentioned, Defendants participated in the wrongdoing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well

1 as the agents of all Defendants, and at all times herein mentioned, were acting within the course and
2 scope of said agency and employment.

3 24. Plaintiff is informed and believes, and based thereon alleges, that at all times material
4 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
5 venture of, or working in concert with each of the other co-Defendants and were acting within the
6 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
7 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
8 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

9 25. At all times herein mentioned, Defendants, and each of them, were members of, and
10 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
11 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 26. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission complained
16 of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
17 acts and omissions of each and all of the other Defendants in proximately causing the damages as
18 herein alleged.

19 27. The members of the Plaintiff Class, including the representative Plaintiff named
20 herein, have been employed during the Class Period in California. The practices and policies which
21 are complained of by way of this Complaint are enforced throughout the State of California and the
22 United States.

23 **FACTUAL ALLEGATIONS**

24 28. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

25 29. Plaintiff and all other members of the Plaintiff Class, including other aggrieved
26 employees, were and are classified by Defendants as non-exempt employees, pursuant to the
27 provisions of the California *Labor Code*, and the orders and standards promulgated by the California
28 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor

Standards. As non-exempt employees, Plaintiff and all other members of the Plaintiff Class, including other aggrieved employees, are entitled to certain benefits. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain accurate records of the hours worked by employees.

30. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

31. Defendants' utilization of such unfair business practices deprives Plaintiff and Plaintiff Class, including other aggrieved employees, members of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

32. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class, including other aggrieved employees, have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage in amounts according to proof at the time of trial.

Defendants' Failure to Pay All Wages

33. Defendants did not compensate their hourly non-exempt employees for all the minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Defendants; and/or the time that the employees were suffered or permitted to work.

34. Defendants rounded Plaintiff's and members of the Plaintiff Class, including other aggrieved employees' time to their detriment. Defendants use a timekeeping software to record its employee work hours. Employees are required to clock into the system at the beginning and end of their shifts, as well as for meal breaks. The system shows the actual time (to the minute) when the employee punched into the system. During the relevant times, Defendants calculated an employee's pay based on his or her "clock in" and "clock out" times subject to a rounding policy where hours are rounded up or down to the nearest quarter of an hour. E.g. if an employee punches in at 2:57, it

would round up to 3:00 and if an employee punched out at 7:27, it would round down to 7:25.

35. Defendants' routine policy of rounding all hours deprived Plaintiff and other Plaintiff Class Members, including other aggrieved employees, of the compensation they should have received for all actual hours worked.

36. Plaintiff alleges that he had uneven and non-rounded punches, but end results are the time being rounded by Defendants. As a result, Defendants have failed and refused to compensate Plaintiff and members of the Plaintiff Class, including other aggrieved employees, all wages due to them for actual hours worked, and are in violation of California *Labor Code* § 1194. Defendants owe each of their hourly employees for the unpaid time each day.

37. Plaintiff also alleges that Defendants routinely required Plaintiff and other Plaintiff Class Members, including other aggrieved employees, to conduct "off-the-clock" work including, but not limited to, before their scheduled shift to prepare to start working.

Defendants' Failure to Pay All Overtime

38. During the Class Period, in violation of the applicable sections of the California *Labor Code* and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants, as a matter of company policy, practice and procedure, intentionally, knowingly, and systematically failed and continue to fail to correctly calculate and pay Plaintiff and other members of the Plaintiff Class, including other aggrieved employees, for all overtime worked. State law provides that employees must be paid overtime at one-and-one-half (1 1/2) times their "regular rate of pay."

39. Plaintiff alleges that he was not properly paid all overtime wages owed in compliance with California labor laws.

40. Specifically, Defendants miscalculated the overtime wages owed on Plaintiff's wage statements. By way of example, during the pay period of 07/26/20 to 08/08/20, Plaintiff worked an hour of overtime, and thus, is entitled to one-and-one-half (1 1/2) times his regular rate of \$18.76. However, Defendants only paid Plaintiff \$9.38, which is half of his regular rate. Thus, Defendants shorted Plaintiff his entitled overtime pay.

1 41. In addition, Plaintiff alleges that Defendants failed to pay all overtime wages owed
2 as a result of the “off-the-clock” work described above and because Defendants did not properly
3 calculate the regular rate of pay, and thus did not pay all overtime wages owed in compliance with
4 California law.

5 42. As a result, Defendants have failed and refused to compensate Plaintiff and members
6 of the Plaintiff Class, including other aggrieved employees, all wages due to them for actual hours
7 worked, and are in violation of California *Labor Code* §§ 510, 1194. Defendants owe each of their
8 hourly employees for the unpaid overtime each day.

9 ***Defendants’ Failure to Provide Meal and Rest Breaks***

10 43. Plaintiff alleges that meal breaks were frequently interrupted by supervisors, or were
11 not provided, thereby depriving Plaintiff and other members of the Plaintiff Class, including other
12 aggrieved employees of the full meal break as required. Plaintiff further alleges that meal premiums
13 paid by Defendants were improperly calculated under *Ferra v. Loews Hollywood Hotel, LLC*, which
14 requires that premiums be paid at the employees' regular rate, not hourly rate of pay.

15 44. Plaintiff alleges that throughout the Relevant Time Period, Defendants regularly:

- 16 a. Failed to provide Plaintiff and other members of the Plaintiff Class, including
17 other aggrieved employees, with a first meal period of not less than thirty (30)
18 minutes during which they are relieved of all duty before working more than five
19 (5) hours;
- 20 b. Failed to pay Plaintiff and other members of the Plaintiff Class, including other
21 aggrieved employees, one hour of pay at their regular rate of compensation for
22 each workday that a meal period was not provided;
- 23 c. Failed to provide Plaintiff and other members of the Plaintiff Class, including
24 other aggrieved employees, with a second meal period of not less than thirty (30)
25 minutes during which they are relieved of all duties before working more than ten
26 (10) hours per day;
- 27 d. Failed to accurately record all meal periods; and
- 28 e. Failed to properly calculate meal period premiums.

1 45. Plaintiff further alleges that rest breaks were frequently interrupted or not authorized
2 and permitted due to business needs, thereby depriving Plaintiff and other members of the Plaintiff
3 Class, including other aggrieved employees, of rest breaks as required under California law.

4 46. Plaintiff alleges that throughout the Relevant Time Period, Defendants regularly:

- 5 a. Failed to authorize and permit Plaintiff and other members of the Plaintiff Class,
6 including other aggrieved employees, to take a rest period of not less than ten (10)
7 minutes during which they are relieved of all duty for every 4 hours worked or
8 major fraction thereof;
- 9 b. Failed to pay Plaintiff and other members of the Plaintiff Class, including other
10 aggrieved employees, one hour of pay at their regular rate of compensation for
11 each workday that a rest period was not permitted; and
- 12 c. Failed to properly calculate rest period premiums.

13 ***Defendants' Failure to Pay all Wages Due at Termination of Employment***

14 47. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
15 discharges an employee to pay compensation due and owing to said employee immediately upon
16 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
17 compensation due and owing to said employee within seventy-two (72) hours of an employee's
18 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
19 compensation promptly upon discharge or resignation, as required under §§ 201 and 202, then the
20 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
21 (30) work days.

22 48. Defendants failed to pay all wages owed to Plaintiff and the Plaintiff Class, including
23 other aggrieved employees, because Defendants rounded all hours worked and miscalculated all
24 overtime worked. Thus, Defendants failed to compensate Plaintiff and other Class members all
25 wages owed upon termination.

26 ***Defendants' Failure to Provide Accurate Wage Statements***

27 49. Defendants failed to comply with California *Labor Code* §226(a) because the hours
28 worked and overtime calculations were incorrect as a result of the uniform, routine and systemic

1 violations described above resulting in a violation of California *Labor Code* § 226(a).

2 50. Further, Defendants miscalculated line items on wage statement. By way of example,
3 for the pay statement beginning 07/12/20 and ending 07/25/20, Plaintiff had 8.00 hours of “STD
4 Sick Pay” at a rate of 18.76. However, Defendants miscalculated this total as \$150.06 shorting
5 Plaintiff by \$0.02.

6 ***Failure to Reimburse Business Expenses***

7 51. California Labor Code § 2802 provides that “(a)n employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
9 the discharge of his or her duties... .

10 52. Plaintiff and other members of the Plaintiff Class, including other aggrieved
11 employees, were regularly required to purchase items, and incur mileage and cellphone expenses in
12 the discharge of their duties and were not reimbursed for the usage.

13 ***Facts Regarding Willfulness***

14 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and
15 were advised by skilled lawyers, other professionals, employees with human resources background
16 and advisors with knowledge of the requirements of California wage and hour laws.

17 54. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
18 times, Defendants had a consistent policy or practice of failing to compensate the Plaintiff Class,
19 members, including Plaintiff.

20 55. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
21 times, Defendants knew or should have known, that the Plaintiff Class members, including Plaintiff,
22 were and are entitled to accurate wages, and to be compensated for all hours worked and for time
23 spent under the control of the Defendants.

24 ***Unfair Business Practices***

25 56. Defendants have engaged in, and continue to engage in, unfair business practices in
26 California by practicing, employing and utilizing the employment practices and policies outlined
27 above.

1 57. Defendants' utilization of such unfair business practices constitutes unfair
2 competition and provides an unfair advantage over Defendants' competitors.

3 58. Defendants' utilization of such unfair business practices deprives Plaintiff and
4 Plaintiff Class Members of the general minimum working standards and entitlements due them
5 under California law and the Industrial Welfare Commission wage orders as described herein.

6 59. As a direct result of the wage and hour violations herein alleged, Plaintiff and
7 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
8 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
9 seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's
10 respective damage in amounts according to proof at the time of trial.

11 ***Plaintiff's Exhaustion of Administrative Remedies***

12 60. Plaintiff is currently complying with the procedures for bringing suit specified in
13 California *Labor Code* § 2699.3.

14 61. By letter dated September 18, 2020 required notice was provided to Labor and
15 Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
16 California *Labor Code* alleged to have been violated, including the facts and theories to support the
17 alleged violations. An amended notice was provided to the LWDA on August 11, 2021.

18 62. This First Amended Complaint was filed more than sixty-five (65) days since the
19 date the amended notice was mailed to Defendants and the LWDA.

20 **CLASS ACTION ALLEGATIONS**

21 63. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

22 64. Plaintiff brings this action on behalf of himself and all others similarly situated as a
23 class action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiff seeks
24 to represent are composed of, and defined as follows:

25 **Plaintiff Class**

26 All persons who have been, or currently are, employed by Defendants
27 and who held, or hold, job positions which Defendants have classified
28 as "non-exempt" employees in the State of California.

1 **Terminated Sub Class**

2 All members of the Plaintiff Class whose employment ended during
3 the Class Period.

4 (collectively “Plaintiff Class” or “Class Members”)

5 65. The Plaintiff Class and Terminated Sub-Class are so numerous that the individual
6 joinder of all members is impracticable. While the exact number and identification of the Plaintiff
7 Class and Terminated Sub-Class are unknown to Plaintiff at this time and can only be ascertained
8 through appropriate discovery directed to Defendant, Plaintiff is informed and believes that the class
9 includes potentially hundreds of members.

10 66. Common questions of law and fact exist as to all Class Members, and predominate
11 over any questions affecting solely individual members of the class. Among the questions of law
12 and fact, that are relevant to the adjudication of class members claims are as follows:

- 13 a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled
14 to the benefits of California wage and hour statutes;
- 15 b. Whether Defendants’ policies resulted in a failure to pay all wages;
- 16 c. Whether Defendants maintained accurate records of the hours worked by
17 members of the Class in violation of California *Labor Code* §1174;
- 18 d. Whether Defendants failed pay Plaintiff and members of the Plaintiff Class for
19 all hours worked;
- 20 e. Whether Defendant failed to correctly calculate all overtime owed to Plaintiff
21 and members of the Plaintiff Class;
- 22 f. Whether Defendants failed to provide compliant meal breaks to Plaintiff and
23 members of the Plaintiff Class and/or failed to correctly calculate meal
24 premiums paid;
- 25 g. Whether Defendants failed to authorize and permit compliant rest breaks to
26 Plaintiff and members of the Plaintiff Class and/or failed to correctly calculate
27 rest premiums paid;
- 28

- 1 h. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff
2 Class for reasonable business expenses incurred in connection with
3 employment;
- 4 i. Whether Defendant failed to timely pay all wages owed to Plaintiff and
5 members of the Terminated Sub-Class upon termination;
- 6 j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if
7 so, the proper measure of such damages, as well as interest, penalties, costs,
8 attorneys' fees, and equitable relief;
- 9 k. Whether the members of the Terminated Sub-Class, that are no longer
10 employed by the Defendants are entitled to penalties pursuant to California
11 *Labor Code* §203;
- 12 l. Whether Defendant failed to provide compliant wage statements; and
- 13 m. Whether Defendant's conduct as alleged herein violates the Unfair Business
14 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

15 67. The claims of the named Plaintiff are typical of the claims of the members of the
16 Plaintiff Class and Terminated Sub Class. Plaintiff and Class Members sustained losses, injuries
17 and damages arising from Defendants' common policies, practices, procedures, protocols, routines,
18 and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery
19 for the same type of losses, injuries, and damages as were suffered by other members of the
20 proposed class.

21 68. Plaintiff is an adequate representative of the proposed classes because he is a member
22 of the class, and his interests do not conflict with the interests of the members she seeks to represent.
23 Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions,
24 and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the
25 classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and
26 his attorneys.

27 69. A class action is superior to other available methods for the fair and efficient
28 adjudication of this litigation since individual litigation of the claims of all Class Members is

1 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
2 individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits.
3 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and
4 the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those
5 with equally meritorious claims. By contrast, the class action device presents far fewer management
6 difficulties, and provides the benefit of a single adjudication, economics of scale, and
7 comprehensive supervision by a single court.

8 70. The various claims asserted in this action are additionally or alternatively certifiable
9 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 10 a. The prosecution of separate actions by hundreds of individual class members
11 would create a risk of varying adjudications with respect to individual class
12 members, thus establishing incompatible standards of conduct for Defendants;
13 and
14 b. The prosecution of separate actions by individual class members would also
15 create the risk of adjudications with respect to them that, as a practical matter,
16 would be dispositive of the interest of the other class members who are not a
17 party to such adjudications and would substantially impair or impede the ability
18 of such non-party class members to protect their interests.

19 71. Plaintiff hereby incorporates each and every allegation contained above and realleges
20 said allegations as if fully set forth herein.

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 72. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 73. Plaintiff brings this representative action pursuant to the Private Attorneys General
24 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), on behalf of the State of California
25 and all individuals who are or previously were employed by Defendants as non-exempt employees
26 during the PAGA Period (“aggrieved employees”) for engaging in a pattern and practice of wage
27 and hour violations under the California Labor Code.
28

74. Plaintiff is informed and believes that Defendants' systematic pattern of wage and hour and IWC Wage Order violations toward Plaintiff and other aggrieved employees in California include, *inter alia*:

- a. Failing to pay Plaintiff and other aggrieved employees' wages for all hours worked (California *Labor Code* §§ 1194 and 204);
- b. Failing to correctly calculate Plaintiff and other aggrieved employees' overtime pay (California *Labor Code* §§ 510, 1194);
- c. Failing to pay Plaintiff and other aggrieved employees all final wages in a timely fashion (California *Labor Code* §§ 201-203);
- d. Failing to reimburse Plaintiff and other aggrieved employees for expenses incurred in connection with their employment (California *Labor Code* § 2802);
- e. Failing to authorize and permit Plaintiff and other aggrieved employees to take compliant rest breaks (California *Labor Code* §§ 200, 226.7, 512);
- f. Failing to provide Plaintiff and other aggrieved employees with compliant meal breaks (California *Labor Code* §§ 200, 226.7, 512); and
- g. Failing to furnish an accurate itemized wage statement upon payment of wages (California *Labor Code* § 226).

75. Plaintiff brings this representative action against Defendants on behalf of other aggrieved employees of Defendants in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code §§ 2699, *et seq.*

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)

76. Plaintiff incorporates herein by reference the allegations set forth above.

77. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200,

226, 1197, and 1198.

78. For at least the four (4) years preceding the filing of this action, Defendants failed to compensate employees for all hours worked. Defendants implemented policies that actively prevented employees from being compensated for all time worked by rounding hours worked to the nearest quarter of an hour.

79. Plaintiff alleges that he had uneven and non-rounded punches, but end results are the time being rounded by Defendants. As a result, Defendants have failed and refused to compensate Plaintiff and members of the Plaintiff Class all wages due to them for actual hours worked, and are in violation of California *Labor Code* § 1194. Defendants owe each of their hourly employees for the unpaid time each day

80. Plaintiff also alleges that Defendants routinely required Plaintiff and the Plaintiff Class to conduct “off-the-clock” work including, but not limited to, before their scheduled shift to prepare to start working.

81. Under the above-mentioned wage order and state regulations, Plaintiff and the Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this action, in addition to reasonable attorneys’ fees and costs of suit in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code* §203 and 206.

82. Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Plaintiff Class for all wages earned and all hours worked, in violation of state law. As a direct result, Plaintiff and the Plaintiff Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys’ fees in seeking to compel Defendants to fully perform its obligation under state law, in accordance with Plaintiff’s and the Plaintiff Class’ respective damage amounts according to proof at time of trial.

83. Defendants committed such actions knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s and the Plaintiff Class’ rights.

84. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

85. As a proximate result of the above-mentioned violations Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME

IN VIOLATION OF CAL. LABOR CODE §§ 510, 1194

(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)

86. Plaintiff incorporates herein by reference the allegations set forth above

87. Plaintiff and other members of the Plaintiff Class bring a claim for Defendants' willful and intentional violations of the California *Labor Code* and the Industrial Welfare Commission requirements for Defendants' failure to accurately calculate the applicable rates for all overtime worked by Plaintiff and other members of the Plaintiff Class and Defendants' failure to properly compensate Plaintiff and members of the Plaintiff Class for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

88. Pursuant to California *Labor Code* § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

89. California *Labor Code* § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

90. California *Labor Code* § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. California *Labor Code* § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

91. Defendants maintained a uniform wage practice of paying Plaintiff and the other members of the Plaintiff Class without regard to the correct applicable calculation of the gross overtime wages for the number of overtime hours worked. As set forth herein, Defendants' uniform

1 policy and practice is to unlawfully and intentionally deny timely payment of wages due for the
2 overtime worked by Plaintiff and the other members of the Plaintiff Class, and Defendants in fact fail
3 to pay these employees the correct applicable overtime wages for all overtime worked.

4 92. Specifically, Defendants miscalculated the overtime wages owed on Plaintiff's wage
5 statements. By way of example, during the pay period of 07/26/20 to 08/08/20, Plaintiff worked on
6 hour of overtime, and thus, is entitled to one-and-one-half (1 1/2) times his regular rate of \$18.76.
7 However, Defendants only paid Plaintiff \$9.38, which is half of his regular rate. Thus, Defendants
8 shorted Plaintiff his entitled overtime pay.

9 93. Defendants further failed to pay all overtime wages owed as a result of the "off-the-
10 clock" work described above and because Defendants did not properly calculate the regular rate of
11 pay, and thus did not pay all overtime wages owed in compliance with California law.

12 94. Defendants' uniform pattern of unlawful wage and hour practices manifested, without
13 limitation, applicable to the Plaintiff Class as a whole, as a result of implementing a uniform policy
14 and practice that denies accurate compensation to Plaintiff and the other members of the Plaintiff Class
15 for all overtime worked, including, the work performed in excess of eight (8) hours in a workday
16 and/or forty (40) hours in any workweek.

17 95. In committing these violations of the California *Labor Code*, Defendants inaccurately
18 calculate the gross wages earned from overtime, and consequently underpays the actual time worked
19 by Plaintiff and other members of the Plaintiff Class. Defendants acts in an illegal attempt to avoid the
20 payment of all earned wages, and other benefits in violation of the California *Labor Code*, the
21 Industrial Welfare Commission requirements and other applicable laws and regulations.

22 96. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff
23 and the other members of the Plaintiff Class do not receive full compensation for all overtime worked.

24 97. By virtue of Defendants' unlawful failure to accurately pay all earned compensation to
25 Plaintiff and the other members of the Plaintiff Class for the true time they worked, Plaintiff and the
26 other members of the Plaintiff Class have suffered and will continue to suffer an economic injury in
27 amounts which are presently unknown to them and which will be ascertained according to proof at
28 trial.

98. Plaintiff and the other members of the Plaintiff Class therefore request recovery of all unpaid overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California *Labor Code* and/or other applicable statutes.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

99. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

100. At all relevant times, Plaintiff and the members of the Plaintiff Class have been non-exempt employees of Defendant entitled to the full meal period protections of both the *Labor Code* and the applicable Industrial Welfare Commission Wage Order.

101. *Labor Code* § 512 and Section 11 of the Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

102. *Labor Code* § 226.7 and §11(A-E) of the Industrial Welfare Commission Wage Order ("Wage Order") both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

103. Compensation for missed meal periods constitutes wages within the meaning of *Labor Code* § 200.

104. Section 11 (A-C) of the Wage Order states:

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

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

6 (C) Unless the employee is relieved of all duty during a 30 minute meal period, the
7 meal period shall be considered an "on duty" meal period and counted as time
8 worked. An "on duty" meal period shall be permitted only when the nature of the
9 work prevents an employee from being relieved of all duty and when by written
10 agreement between the parties an on-the-job paid meal period is agreed to. The
11 written agreement shall state that the employee may, in writing, revoke the agreement
12 at any time."
13

14 105. At all relevant times herein, Plaintiff was not subject to a valid on-duty meal period
15 agreement. Plaintiff is informed and believes that at all relevant times during the applicable
16 limitations period, Plaintiff Class members were not subject to valid on-duty meal period
17 agreements with Defendant. California *Labor Code* § 226.7(a) provides that: "No employer shall
18 require any employee to work during any meal or rest period mandated by an applicable order of the
19 Industrial Welfare Commission."

20 106. Plaintiff alleges that at all relevant times during the applicable limitations period,
21 Defendant maintained a policy or practice of not providing Plaintiff and members of the Plaintiff
22 Class with uninterrupted, duty-free meal periods of at least thirty (30) minutes for each five (5) hour
23 work period, as required by *Labor Code* § 512 and the applicable Wage Order.

24 107. Plaintiff contends that when he and members of the Plaintiff Class worked shifts over
25 (5) hours or more in duration, meal breaks were often not taken or interrupted. When meal periods
26 were not provided, Plaintiff and other members of the Plaintiff Class were not provided premium
27 pay. At all relevant times, Defendant failed to pay Plaintiff and Plaintiff Class members additional
28

1 premium wages, and/or were not paid premium wages at the employees' regular rates of pay when
2 required meal periods were not provided.

3 108. Pursuant to *Labor Code* §§ 204, 218.6, 226.7 and 512, Plaintiff, on behalf of himself
4 and Plaintiff Class members, seeks to recover unpaid premium wages, interest thereon, and costs of
5 suit.

6 109. Pursuant to *Labor Code* § 1194, *Code of Civil Procedure* § 1021.5, the substantial
7 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the Plaintiff
8 Class members, seeks to recover reasonable attorneys' fees.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

11 110. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 111. At all relevant times, Plaintiff and Plaintiff Class members have been non-exempt
13 employees of Defendants entitled to the full rest period protections of both the *Labor Code* and the
14 applicable Wage Order.

15 112. Section 12 of the applicable Wage Order imposes an affirmative obligation on
16 employers to permit and authorize employees to take required rest periods at a rate of no less than
17 ten minutes of net rest time for each four hour work period, or major fraction thereof, that must be in
18 the middle of each work period insofar as practicable.

19 113. *Labor Code* § 226.7 and Section 12 of the applicable Wage Order both prohibit
20 employers from requiring employees to work during required rest periods and require employers to
21 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on
22 each workday that the employee is not provided with the required rest period(s). Defendants failed
23 to comply with the required rest periods established by California *Labor Code* § 226.7, California
24 *Labor Code* § 512, and the applicable Wage Order.

25 114. Compensation for missed rest periods constitutes wages within the meaning of *Labor*
26 *Code* § 200.

27 115. *Labor Code* § 1198 makes it unlawful to employ a person under conditions that
28 violate the Wage Order.

1 116. Specifically, Plaintiff alleges that, at all relevant times during the applicable
2 limitations period, Plaintiff and Plaintiff Class members were unable to take timely rest periods due
3 to work-related duties. Moreover, Defendants did not provide rest period premium pay to
4 compensate when Plaintiff and Plaintiff Class members were unable to take rest periods.

5 117. At all times relevant to this Complaint, each Defendant failed, and has continued to
6 fail, to timely authorize and permit Plaintiff and the members of the Plaintiff Class with rest periods.

7 118. As a direct and proximate result of the acts and/or omissions of each Defendant,
8 Plaintiff and the members of the Plaintiff Class have been deprived of rest period wages due in
9 amounts to be determined at trial.

10 119. Pursuant to California *Labor Code* §§ 204, 218.6, 226.7, 512, and the Wage Order as
11 a result of Defendants' failure to pay Plaintiff and the members of the Plaintiff Class for all rest
12 periods, Plaintiff and members of the Plaintiff Class seek to recover unpaid premium wages, interest
13 thereon, and costs of suit.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES AT TIME OF TERMINATION**

16 **IN VIOLATION OF CAL. LABOR CODE §§ 201-203**

17 **(By Plaintiff and Members of the Terminated Sub-Class Against All Defendants)**

18 120. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 121. At all times, relevant herein, Defendants were required to pay its employees all wages
21 owed in a timely fashion during and at the end of their employment, pursuant to California *Labor*
22 *Code* §§ 201-203.

23 122. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
24 members of the Terminated Sub-Class their final wages pursuant to California *Labor Code* §§ 201-
25 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

26 123. These payments should include worked hours that were not accounted for due to the
27 Defendants' policies of rounding and by failing to correctly calculate overtime compensation while
28 still under and subject to the control of the Defendants.

124. The conduct of Defendants and its agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiff and the individual members of the Terminated Sub Class.

125. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to pay wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who have separated from employment are entitled to compensation pursuant to California *Labor Code* § 203.

SIXTH CAUSE OF ACTION

FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN

VIOLATION OF CALIFORNIA LABOR CODE § 226

(by Plaintiff and the Members of the Plaintiff Class against Defendant)

126. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

127. California *Labor Code* § 226(a) sets forth reporting requirements for employers when they pay wages, as follows: “[e]very employer shall ... at the time of each payment of wages, furnish his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee.... (5) net wages earned ... (8) the name and address of the legal entity that is the employer... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” (Emphasis added.) Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney’s fees.”

128. Defendants failed to correctly indicate the gross wages earned, due to Defendants'

1 systematic policies of rounding all hours worked and by failing to correctly calculate overtime pay.

2 129. Further, Defendant miscalculated line items on wage statement. By way of example,
3 for the pay statement beginning 07/25/20 and ending 07/30/20, Plaintiff had 8.00 hours of “STD
4 Sick Pay” at a rate of 18.76. However, Defendants miscalculated this total as \$150.06 shorting
5 Plaintiff by \$0.02.

6 130. Plaintiff and Class members were damaged by these failures because, among other
7 things, the failures hindered Plaintiff and Class members from determining the amounts of wages
8 actually owed to them.

9 131. Plaintiff and Class members request recovery of California *Labor Code* § 226(e)
10 penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to California
11 *Labor Code* § 226(e), in a sum as provided by the Labor Code and/or other statutes.

12 132. Wherefore, Plaintiff requests relief as hereinafter provided.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802)**

15 **(By Plaintiff and Members of the Class Against All Defendants)**

16 133. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 as though
17 fully set for herein.

18 134. During the Class Period pursuant to Defendants' corporate policy, practice, and
19 procedure, Plaintiff and Class Members were required to incur expenses in direct consequence of the
20 discharge of their duties, or as a consequence of obeying the directions of Defendants. This
21 specifically includes, but is not limited to mileage and cellphone expenses.

22 135. Defendants failed and refused, pursuant to corporate policy, practice and procedure,
23 to reimburse Plaintiff and Class Members for such expenditures, as required by the applicable IWC
24 wage orders or Labor Code §2802.

25 136. Said conduct on the part of Defendants was willful, intentional, and/or taken in
26 conscious disregard of the rights of Plaintiff and Class Members, and Plaintiff seeks compensatory
27 damages, as well as interest, costs, attorneys' fees, and penalties as permitted by the Labor Code.
28

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATIONS OF CALIFORNIA**

3 **BUSINESS AND PROFESSIONS CODE § 17200, etc.**

4 **(By Plaintiff and the Members of the Plaintiff Class, Against All Defendants)**

5 137. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
6 herein.

7 138. Section 17200 of the California *Business and Professions Code* prohibits any
8 unlawful, unfair or fraudulent business act or practice.

9 139. Plaintiff brings this cause of action in a representative capacity on behalf of the
10 general public and the persons affected by the unlawful and unfair conduct described herein.
11 Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and
12 monetary damages because of Defendants' actions.

13 140. The actions by Defendants as herein alleged amount to conduct which is unlawful
14 and a violation of law. As such, said conduct amounts to unfair business practices in violation of
15 California *Business and Professions Code* § 17200, *et seq.*

16 141. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the
17 Plaintiff Class by denying them wages due and payable, and by failing to pay all wages due in a
18 timely manner at the time of termination (for the Terminated Sub Class). Defendants' actions are
19 thus substantially injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in
20 fact and loss of money.

21 142. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
22 due to the Plaintiff and the members of the Plaintiff Class.

23 143. All members of the Plaintiff Class can be identified by reference to payroll and
24 related records in the possession of the Defendants. The amount of wages due to Plaintiff and
25 members of the Plaintiff Class can be readily determined from Defendants' records. The Class
26 Members are entitled to restitution of monies due and obtained by Defendant during the Class Period
27 as a result of Defendants' unlawful and unfair conduct.
28

144. During the Class Period, Defendants committed, and continue to commit, acts of unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other things, engaging in the acts and practices described above.

145. Defendants' course of conduct, acts, and practices in violation of the California law as mentioned in each paragraph above constitutes a separate and independent violation of § 17200, etc., of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

146. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices and therefore, Defendants' actions described herein constitute an unfair business practice or act within the meaning of *Business and Professions Code* § 17200.

147. Defendants' conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

148. Defendants' course of conduct described herein further violates California *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

149. The unlawful, unfair, and fraudulent business practices and acts of Defendants as described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were wrongfully denied the timely and full payment of wages due to them.

NINTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA LABOR CODE § 2698, ET SEQ.

PRIVATE ATTORNEYS GENERAL ACT OF 2004

(By Plaintiff and Aggrieved Employees, Against All Defendants)

150. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

151. Plaintiff is an aggrieved employee as defined by Cal. Lab. Code § 2699(c) as having been employed by Defendants during the applicable statutory period and suffered injury as a result of Defendants' Labor Code violations. Accordingly, Plaintiff seeks to recover on behalf of the State

1 of California, as well as himself and all other current and former aggrieved employees of Defendants
2 who have worked as non-exempt employees in California, the civil penalties provided by PAGA,
3 plus reasonable attorney's fees and costs.

4 152. As detailed above, Plaintiff and the aggrieved employees are entitled to penalties for
5 Defendants' violations of California *Labor Code* §§ 200, 201-204, 226, 226.7, 510, 512, 1194,
6 1194.2, 1197, 1197.1, 2802 and the applicable wage order, as set forth by California *Labor Code* §
7 2699(f).

8 153. Plaintiff complied with the notice requirement of California *Labor Code* §2699.3 and
9 served a written notice to the California Labor & Workforce Development Agency ("LWDA"). By
10 letter dated September 18, 2020, Plaintiff gave written notice to the Labor and Workforce
11 Development Agency ("LWDA") and to Defendants of the specific provisions of the Labor Code
12 alleged to have been violated, including the facts and theories to support the alleged violations. An
13 amended notice was provided to the LWDA by letter on August 11, 2021 with additional allegations
14 and alleged violations of the Labor Code.

15 154. More than 65 days have passed since serving the LWDA with notice of Defendants'
16 violations and the LWDA has not provided any notice by certified mail of its intent to investigate the
17 Defendants' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly,
18 pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiff may commence and is authorized to pursue
19 this cause of action.

20 155. California Labor Code § 2699(f) provides for civil penalties for violation of all Labor
21 Code provisions for which no civil penalty is specifically provided. There is no specified civil
22 penalty for violations of Cal. Lab. Code § 2802 and Wage Order No. 9 and Cal. Lab. Code § 432.5.
23 With respect to the minimum wage violations under Cal. Lab. Code §§ 1197 and 1194, § 1197.1
24 imposes a civil penalty in addition to any other penalty provided by law of one hundred (\$100) for
25 each underpaid employee for each pay period for which the employee is underpaid in addition to an
26 amount sufficient to recover underpaid wages and liquidated damages, and, for each subsequent
27 violation of Labor Code §§ 1197 and 1194, two hundred and fifty dollars (\$250) for each underpaid
28 employee for each pay period for which the employee is underpaid in addition to an amount

1 sufficient to recover unpaid wages and liquidated damages. With respect to overtime violations
2 under Labor Code §§ 510, the statute imposes a civil penalty in addition to any other penalty
3 provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay
4 period for which the employee was underpaid in addition to an amount sufficient to recover unpaid
5 wages, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for
6 each pay period for which the employee was underpaid in addition to an amount sufficient to
7 recover underpaid wages. With respect to meal and rest break violations under Labor Code §§ 226.7
8 and 512, Labor Code § 558 imposes a civil penalty in addition to any other penalty provided by law
9 of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which
10 the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one
11 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
12 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
13 wages. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil
14 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
15 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
16 employee for each subsequent violation of Labor Code § 226(a). With respect to violations of Labor
17 Code §§ 201, 202, 203 & 204, Labor Code § 210 imposes a civil penalty in addition to any other
18 penalty provided by law of one hundred dollars (\$100) per aggrieved employee for the first
19 violation, and two hundred (\$200) dollars per aggrieved employee plus twenty-five percent of the
20 amount unlawfully withheld.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff and Plaintiff Class Members, including other aggrieved employees,
23 pray for judgment as follows:

- 24 1. For an order certifying the proposed Plaintiff, Plaintiff Class and Terminated Sub
25 Class;
- 26 2. An order that counsel for Plaintiff be appointed class counsel;
- 27 3. Certification of this class action on behalf of the proposed Plaintiff, Plaintiff Class
28 and Terminated Sub-Class;

4. Designation of Plaintiff as the class representative of the Plaintiff, Plaintiff Class and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
6. A declaration that Defendants' practices violate the California *Labor Code* and California *Business & Professions Code*;
7. On behalf of the State of California and the Aggrieved Employees: For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act;
8. Prejudgment and post judgment interest on all sums awarded;
9. For compensatory damages;
10. For penalties pursuant to California *Labor Code* §§ 200, 203, 226, 558, 2802 and/or 2699 *et seq.*;
11. For interest accrued to date;
12. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
13. For reasonable attorneys' fees pursuant to California *Labor Code* § 1194; and,
14. A declaratory judgment.
15. For all such other and further relief that the Court may deem just and proper.

DATED: December 3, 2021

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II

By: 

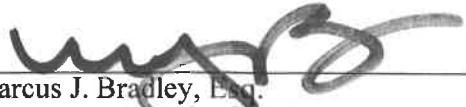
Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Lirit A. King, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: December 3, 2021

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II

By: 

Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Lirit A. King, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December 3,, 2021, at Westlake Village, California.

Suzette Boucher
Suzette Boucher

Gonzalez v. Los Angeles Jewish Home for the Aging
Los Angeles County Superior Court
Case No.:20STSCV35976

Service List

Alecia W. Windfield, Esq. Ashley J. Brick, Esq. James A. Becerra, Esq. LITTLER MENDELSON, P.C. 2049 Century Park East, 5th Floor Los Angeles, CA 90067.3107 Telephone: 310.553.0308 Facsimile: 310.553.5583 awinfield@littler.com abrick@littler.com jbecerra@littler.com Assistant: Annette Ryan <u>Aryan@littler.com</u> (310) 772-7278 direct	Attorneys for Defendants, LOS ANGELES JEWISH HOME FOR THE AGING and EISENBERG VILLAGE OF THE LOS ANGELES JEWISH HOME FOR THE AGING
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