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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

13 JUANITA VALLADARES, individually,
14 and on behalf of other members of the
general public similarly situated,

15 Plaintiff,

16 vs.

17 MOUNTAIN SHADOWS SUPPORT
GROUP, a California corporation;
18 MOUNTAIN SHADOWS ANCILLARY
SERVICES, a California corporation; and
19 DOES 1 through 10, inclusive,

20 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/30/2020 at 09:28:00 AM

Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

Case No.: 37-2020-00037995-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Juanita Valladares, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county
5 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Juanita Valladares is a resident of Escondido, in San Diego County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Direct Care Staff
10 Member from approximately January 7, 2019 to April 30, 2020. Plaintiff worked for
11 Defendants at their location in Escondido, California. During her employment, Plaintiff
12 typically worked eight (8) to twelve (12) hours or more per day, and four (4) to five (5) days
13 per week. Plaintiff's primary job duties included, without limitation, attending to residents'
14 needs such as bathing, laundry, and feeding; cleaning and sanitizing the community home;
15 administering medications; and supervising and accompanying residents to medical
16 appointments.

17 5. MOUNTAIN SHADOWS SUPPORT GROUP was and is, upon information and
18 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county, the State of California, or the various states of
20 the United States of America.

21 6. MOUNTAIN SHADOWS ANCILLARY SERVICES was and is, upon
22 information and belief, a California corporation, and at all times hereinafter mentioned, an
23 employer whose employees are engaged throughout this county, the State of California, or the
24 various states of the United States of America.

25 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
26 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
27 complaint and serve such fictitiously named Defendants once their names and capacities
28 become known.

1 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of MOUNTAIN SHADOWS SUPPORT
3 GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES at all relevant times.

4 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, MOUNTAIN
6 SHADOWS SUPPORT GROUP; MOUNTAIN SHADOWS ANCILLARY SERVICES; and/or
7 DOES 1 through 10 (collectively, “Defendants” or “MSSG”), each acting as the agent,
8 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
9 Defendants and was acting within the course and scope of such agency, employment, joint
10 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
11 and all Defendants were in accordance with, and represent, the official policy of Defendants.

12 10. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

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

19 12. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
22 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
23 their work schedule and/or conditions of employment, determined their rate of pay, and
24 maintained their employment records. Defendants suffered or permitted Plaintiff and class
25 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
26 employment relationship. As joint employers of Plaintiff and class members, Defendants are
27 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
28 class members under the law.

1 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by Plaintiff
5 and class members;
6 (b) jointly exercised meaningful control over Plaintiff's and class members'
7 wages, hours, and working conditions, including the quantity, quality
8 standards, speed, scheduling, and operative details of the tasks performed
9 by Plaintiff and class members;
10 (c) jointly required that Plaintiff and class members perform work which is
11 an integral part of Defendants' businesses; and
12 (d) jointly exercised control over Plaintiff and class members as a matter of
13 economic reality in that Plaintiff and class members were dependent on
14 Defendants, who shared the power to set the wages of Plaintiff and class
15 members and determined their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and
17 noncompliance with other statutory provisions governing their
18 employment.

19 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 there has existed a unity of interest and ownership between Defendants such that any
21 individuality and separateness between the entities has ceased.

22 15. MOUNTAIN SHADOWS SUPPORT GROUP; MOUNTAIN SHADOWS
23 ANCILLARY SERVICES; and DOES 1 through 10 are therefore alter egos of each other.

24 16. Adherence to the fiction of the separate existence of Defendants would permit an
25 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
26 liability for the wrongful acts committed by them under the name MSSG.

27 17. Plaintiff further alleges, upon information and belief, that Defendants
28 MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY

SERVICES are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES share the same mailing address, "970 LOS VALLECITOS BLVD., STE 240, SAN MARCOS CA 92069;"
- (b) According to their most recent "Statement of Information" forms filed with the California Secretary of State, MOUNTAIN SHADOWS ANCILLARY SERVICES and MOUNTAIN SHADOWS SUPPORT GROUP share the same Secretary and Chief Financial Officer, Carol Haskin and Robert Chakarian, respectively;
- (c) MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES share the same agent for service of process, Wade Wilde, who also serves as an Executive Director for MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES; and
- (d) On information and belief, MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants operate approximately 30 licensed homes for intellectually disabled residents and consumers throughout San Diego and Riverside counties. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in San Marcos, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

1 19. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions.

6 20. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their company headquarters in San Marcos, California, which processes payroll
8 for all non-exempt, hourly paid employees working for Defendants at their various locations
9 and jobsites in California, including Plaintiff and class members. Based upon information and
10 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
11 employees in California, irrespective of their work locations. Upon information and belief,
12 Defendants process payroll for departing employees in the same manner throughout the State
13 of California, regardless of the manner in which each employee's employment ends.

14 21. Defendants continue to employ non-exempt or hourly paid employees in
15 California.

16 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
18 advisors knowledgeable about California labor and wage law, employment and personnel
19 practices, and about the requirements of California law.

20 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
21 members were not paid for all hours worked because all hours worked were not recorded.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive certain wages for
24 overtime compensation and that they were not receiving certain wages for overtime
25 compensation.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
28 pay, and corresponding overtime rate of pay, that included as eligible income all remuneration

1 required by law, including but not limited to, all income derived from shift differential pay,
2 incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

3 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive at least minimum
5 wages for compensation and that they were not receiving at least minimum wages for work that
6 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
7 class members were not paid at least minimum wages for work done off-the-clock.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to meal periods in accordance
10 with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay
11 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and
12 that Plaintiff and class members were not provided with all meal periods or payment of one (1)
13 additional hour of pay at their regular rates of pay when they did not receive a timely,
14 uninterrupted, thirty (30) minute meal period.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to rest periods in accordance
17 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of
18 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
19 rest period. In violation of the California Labor Code, Plaintiff and class members were not
20 authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff
21 and class members with payment of one (1) additional hour of pay at their regular rates of pay
22 when they were not authorized and permitted to take a compliant rest period.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive complete and
25 accurate wage statements in accordance with California law. In violation of the California
26 Labor Code, Plaintiff and class members were not provided complete and accurate wage
27 statements.

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1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
4 and intentionally failed to do so.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to timely payment of all
7 wages earned upon termination of employment. In violation of the California Labor Code,
8 Plaintiff and class members did not receive payment of all wages due, including, but not limited
9 to, overtime wages, minimum wages, and/or meal and rest period premium wages, within
10 permissible time periods.

11 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to timely payment of wages
13 during their employment. In violation of the California Labor Code, Plaintiff and class members
14 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
15 wages, and/or meal and rest period premium wages, within permissible time periods.

16 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
18 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
19 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they were not permitted to compel or coerce Plaintiff and class members
22 to patronize their business in the purchase of anything of value, but did in fact require Plaintiff
23 and class members to purchase various items, including uniforms, from Defendants.

24 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to be paid a split-shift
26 premium when they returned to work for an additional shift in the same day, after having been
27 clocked out for more than an hour.

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1 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive full reimbursement
3 for all business-related expenses and costs they incurred during the course and scope of their
4 employment and that they did not receive full reimbursement of applicable business-related
5 expenses and costs incurred.

6 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiff and class members with written notice of the material terms of their employment with
9 Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly,
10 and intentionally failed to do so.

11 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
13 and class members for all hours worked, and that Defendants had the financial ability to pay
14 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
15 represented to Plaintiff and class members that they were properly denied wages, all in order to
16 increase Defendants' profits.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 39. At all times herein set forth, PAGA provides that any provision of law under the
19 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
20 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
21 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
22 behalf of themselves and other current or former employees pursuant to procedures outlined in
23 California Labor Code section 2699.3.

24 40. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
25 person who was employed by the alleged violator and against whom one or more of the alleged
26 violations was committed."

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1 41. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

4 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
6 requirements have been met:

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violation.

11 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
12 2699.3(a) and any employer response to that notice shall be accompanied
13 by a filing fee of seventy-five dollars (\$75).

14 (c) The LWDA shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
17 the postmark date of the aggrieved employee’s notice. Upon receipt of
18 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
19 (65) calendar days of the postmark date of the aggrieved employee’s
20 notice, the aggrieved employee may commence a civil action pursuant to
21 California Labor Code section 2699 to recover civil penalties.

22 43. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
23 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
24 other than those listed in Section 2699.5 after the following requirements have been met:

25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be accompanied
4 by a filing fee of seventy-five dollars (\$75).

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice sent by the aggrieved
7 employee or representative. The employer shall give written notice
8 within that period of time by certified mail to the aggrieved employee or
9 representative and by online filing with the LWDA if the alleged violation
10 is cured, including a description of actions taken, and no civil action
11 pursuant to Section 2699 may commence. If the alleged violation is not
12 cured within the 33-day period, the aggrieved employee may commence
13 a civil action pursuant to Section 2699.

14 44. On October 21, 2020, Plaintiff provided written notice by online filing to the
15 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
16 Code alleged to have been violated, including facts and theories to support the alleged
17 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
18 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
19 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
20 PAGA Case Number LWDA-CM-810202-20. A true and correct copy of Plaintiff's written
21 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

22 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
24 to investigate Plaintiff's claims and Defendants have not cured the violations.

25 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 450, 510,
28 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

47. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

48. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

49. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

52. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

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1 53. Plaintiff's proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, within four years prior to the filing
 of the initial complaint until the date of trial ("Class").

4 54. Plaintiff's proposed subclass consists of and is defined as follows:

5 All persons who worked for Defendants as non-exempt, hourly
6 paid employees in California and who received at least one wage
7 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

8 55. Members of the Class and Subclass are referred to herein as "class members."

9 56. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

12 57. There are common questions of law and fact as to class members that
13 predominate over questions affecting only individual members, including, but not limited to:

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
16 hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (b) Whether Defendants failed to properly calculate the "regular rate" of pay
19 on which Plaintiff's and class members' overtime rate of pay was based;
- 20 (c) Whether Defendants failed to pay Plaintiff and class members at least
21 minimum wages for all hours worked;
- 22 (d) Whether Defendants failed to provide Plaintiff and class members with
23 meal periods;
- 24 (e) Whether Defendants failed to authorize and permit Plaintiff and class
25 members to take rest periods;
- 26 (f) Whether Defendants provided Plaintiff and class members with complete
27 and accurate wage statements as required by California Labor Code
28 section 226(a);

- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premium wages due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premium wages to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;
- (k) Whether Defendants compelled and/or coerced Plaintiff and class members to patronize their business;
- (l) Whether Defendants required Plaintiff and class members to return to work for an additional shift in the same day, after having been clocked out for more than an hour, without paying Plaintiff and class members an addition hour of pay at the minimum wage as required by California Code of Regulations, Title 8, section 11050(4)(C);
- (m) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (n) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (o) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (p) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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1 58. There is a well-defined community of interest in the litigation and the class
2 members are readily ascertainable:

3 (a) Numerosity: The class members are so numerous that joinder of all
4 members would be unfeasible and impractical. The membership of the
5 entire class is unknown to Plaintiff at this time; however, the class is
6 estimated to be greater than one hundred (100) individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' employment records.

9 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
10 the interests of each class member with whom she has a well-defined
11 community of interest, and Plaintiff's claims (or defenses, if any) are
12 typical of all class members as demonstrated herein.

13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
14 the interests of each class member with whom she has a well-defined
15 community of interest and typicality of claims, as demonstrated herein.
16 Plaintiff acknowledges that she has an obligation to make known to the
17 Court any relationship, conflicts or differences with any class member.
18 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
19 governing class action discovery, certification, and settlement. Plaintiff
20 has incurred, and throughout the duration of this action, will continue to
21 incur costs and attorneys' fees that have been, are, and will be necessarily
22 expended for the prosecution of this action for the substantial benefit of
23 each class member.

24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort, and expense as compared with separate
27 lawsuits, and will avoid inconsistent outcomes because the same issues
28 can be adjudicated in the same manner and at the same time for the entire

1 class.

2 (e) Public Policy Considerations: Employers in the State of California
3 violate employment and labor laws every day. Current employees are
4 often afraid to assert their rights out of fear of direct or indirect retaliation.
5 Former employees are fearful of bringing actions because they believe
6 their former employers might damage their future endeavors through
7 negative references and/or other means. Class actions provide the class
8 members who are not named in the complaint with a type of anonymity
9 that allows for the vindication of their rights while simultaneously
10 protecting their privacy.

11 **FIRST CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

13 **(Against all Defendants)**

14 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 60. Labor Code section 1198 makes it illegal to employ an employee under
17 conditions of labor that are prohibited by the applicable wage order. California Labor Code
18 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
19 be the . . . standard conditions of labor for employees. The employment of any employee . . .
20 under conditions of labor prohibited by the order is unlawful.”

21 61. California Labor Code section 1198 and the applicable IWC Wage Order provide
22 that it is unlawful to employ persons without compensating them at a rate of pay either time-
23 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
24 worked by the person on a daily or weekly basis.

25 62. Specifically, the applicable IWC Wage Order provides that Defendants are and
26 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
27 more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours
28 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

1 63. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
3 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
4 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
5 employee, including shift differential pay, nondiscretionary bonuses, and incentive pay.

6 64. California Labor Code section 510 codifies the right to overtime compensation
7 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
9 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
10 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
11 the seventh (7th) day of work.

12 65. During the relevant time period, Defendants willfully failed to pay all overtime
13 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
14 members were not paid overtime premiums for all of the hours they worked in excess of eight
15 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
16 in a week, because all hours worked were not recorded.

17 66. During the relevant time period, Defendants had a company-wide policy and/or
18 practice of improperly rounding employee clock-in and clock-out duration times to six (6)
19 minute increments in their timekeeping system. Defendants' rounding policy resulted in the
20 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
21 and class members to not be paid overtime wages for all of the overtime hours they actually
22 worked. Upon information and belief, Defendants' rounding policy is, and continues to be,
23 unfair and has, over time, resulted in the underpayment of wages to Plaintiff and class members.
24 To the extent Defendants' rounding policy has taken away time worked that was eligible for
25 overtime, Plaintiff and class members were denied overtime pay for all hours worked.

26 67. Additionally, Defendants had, and continue to have, a company-wide policy
27 and/or practice of understaffing their locations while assigning heavy workloads and failing to
28 schedule meal periods, resulting in a failure to provide Plaintiff and class members with

adequate meal period coverage. Plaintiff and class members worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to handle the workload. As a result, Plaintiff and class members were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Defendants knew or should have known that Plaintiff and class members were being made to work during unpaid meal periods, but failed to compensate them for this off-the-clock work.

68. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

69. Furthermore, Defendants did not pay Plaintiff and class members the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and class members shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including but not limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

70. Specifically, Plaintiff and class members were eligible for and earned shift differential pay and/or incentive pay. During pay periods that Plaintiff and class members were paid overtime wages, Defendants failed to incorporate shift differential pay and/or incentive pay into Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect

1 and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and
2 class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
3 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
4 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
5 company-wide basis.

6 71. As an example, for the pay period ending on December 31, 2019, Plaintiff earned
7 shift differential pay and/or incentive pay. During this same pay period, Plaintiff incurred
8 overtime. However, Plaintiff's overtime and double-time rates of pay do not incorporate the
9 shift differential pay and/or incentive pay. Instead, Defendants only paid Plaintiff for overtime
10 work based upon her straight hourly rate of pay of \$12.25, paying her \$18.375 per hour (\$12.25
11 x 1.5) for overtime and \$24.50 per hour (\$12.25 x 2) for double-time she incurred. Therefore,
12 during times when Plaintiff and class members worked overtime and received shift differential
13 pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, Defendants
14 failed to pay all overtime wages by paying lower overtime and double-time rates than required.

15 72. Defendants' failure to pay Plaintiff and class members the balance of overtime
16 compensation as required by California law, violates the provisions of California Labor Code
17 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
18 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
19 and attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 22 **Minimum Wages** 23 **(Against all Defendants)**

24 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
28 minimum wage to be paid to employees, and the payment of a wage less than the minimum so

1 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during
2 which an employee is suffered or permitted to work for the employer, whether or not required
3 to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.” Cal.
4 Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

5 75. As stated, Defendants had a company-wide policy and/or practice of rounding
6 Plaintiff’s and class members’ hourly clock-in and clock-out times in their timekeeping system,
7 resulting in the failure to compensate Plaintiff and class members for all hours worked.
8 Moreover, as also stated above, due to Defendants’ company-wide policies and/or practices of
9 understaffing while assigning heavy workloads, failing to schedule meal periods, and resultant
10 lack of meal period coverage, Plaintiff and class members were impeded from taking all
11 uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

12 76. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff and
13 class members worked through that qualified for overtime premium payment. To the extent
14 that these off-the-clock hours did not qualify for overtime premium payment, Defendants did
15 not pay at least minimum wages for those hours worked off-the-clock in violation of California
16 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

17 77. Defendants’ failure to pay Plaintiff and class members minimum wages violates
18 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
19 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
20 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

21 **THIRD CAUSE OF ACTION**

22 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

23 **Violations**

24 **(Against all Defendants)**

25 78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 79. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is not
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

6 80. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 81. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
10 the applicable IWC Wage Order also require employers to provide a second meal period of not
11 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.
15 The applicable IWC Wage Order further provides that employees in the health care industry
16 who work shifts in excess of eight (8) hours in a workday may waive one of their two meal
17 periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8,
18 § 11050(11)(D).

19 82. Under California law, an employer cannot evade meal period requirements via
20 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec.*
21 *Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

22 83. During the relevant time period, as stated, Defendants had, and continue to have,
23 a company-wide policy and/or practice of understaffing while assigning heavy workloads. As
24 a result, Plaintiff and class members would be forced to work in excess of five (5) hours before
25 taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods
26 altogether. Further, as stated, Defendants had a company-wide practice of failing to schedule
27 meal periods, which further caused Plaintiff and class members to not be relieved of their duties
28 for compliant meal periods. For example, Plaintiff missed her meal periods three (3) times per

1 month in order to provide care and supervision for residents.

2 84. Further, in conjunction with Defendants' practice of understaffing, Defendants
3 forced Plaintiff and class members to work through their meal periods by requiring them to
4 remain on or near the premises for their meal periods. Because Plaintiff and class members
5 were restricted from leaving the premises during meal periods, they were denied the ability to
6 use their meal periods freely for their own purposes. Thus, Defendants effectively maintained
7 control over Plaintiff and class members during meal periods.

8 85. To the extent Defendants required Plaintiff and class members to sign written
9 "on-duty" meal period agreements, Defendants' "Agreement for On-Duty Meal Period" does
10 not comply with Wage Order 5's requirements for on-duty meal periods. Wage Order 5 permits
11 on-duty meal periods only when (a) the employees eat with the clients during their meals and
12 are provided with the same meal the clients eat at no charge; or (b) the employee is the sole
13 person in charge and, on the day shift, and is provided a meal at no charge. Cal. Code Regs.,
14 tit. 8, § 11050(11)(E). Other than the on-duty meal policy which states that employees may be
15 required to take on-duty meal periods, Defendants, on information and belief, do not have any
16 policies with respect to providing Plaintiff and class members with compliant meal periods.
17 Throughout her employment, Plaintiff was required eat with and attend to residents during her
18 meal periods and thus remained on-duty. Plaintiff was not provided with the same meal as
19 residents at no charge, but instead ate food that she brought from home. Furthermore,
20 Defendants' on-duty meal policy did not inform Plaintiff and class members that on-duty meal
21 periods must be timely or that they are entitled to a 30-minute on-duty meal period.

22 86. Defendants also did not schedule second meal periods and had no policy for
23 permitting Plaintiff and class members to take second 30-minute meal periods on days that they
24 worked in excess of ten (10) hours in one day. For example, Plaintiff would work in excess of
25 ten (10) hours per day, and was not provided her second meal period during these shifts.
26 Defendants did not present Plaintiff and class members with the opportunity to voluntarily
27 choose whether to waive their second 30-minute meal period on any given day. Plaintiff and
28 class members did not sign valid meal period waivers on days that they were entitled to meal

1 periods and were not relieved of all duties.

2 87. Moreover, Defendants engaged in a company-wide practice and/or policy of not
3 paying all meal period premiums owed when compliant meal periods are not provided. Because
4 of Defendants' practices and/or policies, Plaintiff and class members have not received premium
5 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
6 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
7 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
8 premium wages because Defendants systematically failed to include all forms of compensation,
9 such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of
10 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and
11 class members compliant meal periods in violation of California Labor Code sections 226.7,
12 512, and 516 and failed to pay the full meal period premiums due.

13 88. Defendants' conduct violates the applicable IWC Wage Order, and California
14 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
15 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
16 rate of compensation for each work day that the meal period was not provided.

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 19 **(Against all Defendants)**

20 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 90. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
24 members' employment by Defendants.

25 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

92. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7, Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or practice of understaffing and assigning heavy workloads prevented Plaintiff and class members from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods.

94. Furthermore, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and/or class members remain on the work premises during their rest periods. Upon information and belief, Defendants’ company-wide on-premises rest period policy prevented Plaintiff and class members from being relieved of all duties for rest periods and caused them to perform work during rest periods when they were not in sole charge of residents.

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95. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Plaintiff would miss her rest periods due to Defendants' policy of assigning heavy workloads and failing to provide sufficient coverage. Defendants failed to authorize and permit Plaintiff and class members to take another rest period when their rest periods were interrupted to respond to the needs of residents.

96. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

97. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage
Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)**

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and

1 complete itemized wage statement in writing, including, but not limited to, the name and address
2 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
3 and all applicable rates of pay.

4 100. At all relevant times, Defendants have knowingly and intentionally provided
5 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
6 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
7 fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of
8 the legal entity that is the employer; and all applicable hourly rates in effect during the pay
9 period, including overtime rates of pay, and the corresponding number of hours worked at each
10 hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
11 226(a)(8), and 226(a)(9).

12 101. First, because Defendants did not record the time Plaintiff and Subclass members
13 spent working off the clock and improperly rounded Plaintiff's and Subclass members' total
14 hours worked, Defendants did not list the correct amount of gross wages and net wages earned
15 by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the
16 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
17 and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
18 rates of pay in effect during the pay period and corresponding accurate number of work hours
19 worked at each hourly rate in violation of section 226(a)(9).

20 102. Second, because Defendants did not calculate Plaintiff's and Subclass members'
21 regular rate of pay correctly for purposes of paying overtime, Defendants did not list the correct
22 amount of gross wages earned by Plaintiff and Subclass members in compliance with section
23 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned
24 by Plaintiff and Subclass members in violation of section 226(a)(5). Defendants also failed to
25 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime
26 rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

27 103. Third, and separate from these violations, Defendants issued uniform wage
28 statements to Plaintiff and Subclass members that failed to correctly list the correct address of

1 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
2 226(a)(8) is to provide California employees with transparency as to the true identity of their
3 employer, to allow the employee to contact their employer during employment in the future for
4 various reasons, including filing an administrative claim, judicial claim, or other action to seek
5 relief against their employer, to obtain unemployment benefits, etc. Plaintiff's and Subclass
6 members' wage statements incorrectly list Defendants' address as "2067 W El Norte Pkwy,
7 Escondido, CA 92026", but, according to the California Secretary of State's website,
8 Defendants' address is "970 Los Vallecitos Blvd., Suite 240, San Marcos, CA 92069."

9 104. The wage statement deficiencies also include, without limitation, failing to list
10 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
11 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
12 the last four digits of his or her social security number or an employee identification number
13 other than a social security number; failing to list the name of the legal entity that is the
14 employer; failing to list the inclusive dates of the period for which class members were paid;
15 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
16 the-clock.

17 105. California Labor Code section 1198 provides that the maximum hours of work
18 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
19 forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment
20 of any employees for longer hours than those fixed by the order or under conditions of labor
21 prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers
22 are required to keep accurate time records showing when the employee begins and ends each
23 work period and meal period. During the relevant time period, Defendants failed, on a
24 company-wide basis, to keep accurate records of work period and meal period start and stop
25 times for Plaintiff and Subclass members, in violation of section 1198. Furthermore, in light of
26 Defendants' failure to provide Plaintiff and Subclass members with second 30-minute meal
27 periods to which they were entitled, Defendants kept no records of meal start and end times for
28 second meal periods.

106. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and Subclass members’ total hours worked.

107. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

109. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

110. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72)

1 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
3 quitting.

4 111. Defendants willfully failed to pay Plaintiff and class members who are no longer
5 employed by Defendants the earned and unpaid wages set forth above, including but not limited
6 to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the
7 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

8 112. Defendants' failure to pay Plaintiff and class members who are no longer
9 employed by Defendants their wages earned and unpaid at the time of discharge, or within
10 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
11 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
12 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
13 thirty (30) day maximum pursuant to California Labor Code section 203.

14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 16 **Employment** 17 **(Against all Defendants)**

18 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 114. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, and/or meal and rest period premium wages, that were not timely paid
22 to Plaintiff and class members during their employment.

23 115. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

28 ///

116. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

117. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

118. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within the time periods specified by California Labor Code section 204.

119. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

121. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or

1 equipment are required by the employer or are necessary to the performance of a job, such tools
2 and equipment shall be provided and maintained by the employer, except that an employee
3 whose wages are at least two (2) times the minimum wage provided herein may be required to
4 provide and maintain hand tools and equipment customarily required by the trade or craft.”

5 122. First, during the relevant time period, Defendants had a company-wide policy of
6 requiring Plaintiff and class members to utilize their own personal cellular phones and cellular
7 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their
8 work-related cellular phone expenses. Plaintiff and class members were required to use their
9 personal cellular phones to complete their work-related tasks, such as discussing work
10 assignments with management. For example, Plaintiff would spend approximately one (1) hour
11 per week speaking with her supervisor about work-related matters. Although Defendants
12 required Plaintiff and class members to utilize their personal cellular phones to carry out their
13 work-related responsibilities, Defendants failed to fully reimburse them for this cost.

14 123. Second, Defendants, on a company-wide basis, required Plaintiff and other class
15 members use their own personal vehicles to carry out company business, such as driving
16 residents to medical appointments and attending requisite trainings, but failed to reimburse them
17 for all costs of travel, including mileage. For example, Plaintiff periodically drove 20 miles
18 roundtrip to in her personal vehicle to accompany residents to their medical appointments.
19 Plaintiff was also required to drive 15 miles each way from her home to Escondido, California,
20 to attend mandatory in-person training courses at Defendants’ San Marcos, California office,
21 but was never reimbursed for her mileage to and from these trainings. Although Defendants
22 required Plaintiff and class members to utilize their own vehicles and complete these tasks as
23 part of their job duties, Defendants never reimbursed them for all of their travel expenses.

24 124. Third, Defendants also had a company-wide policy of requiring Plaintiff and
25 class members to travel in their own personal vehicles or obtain alternate transportation to
26 undergo mandatory drug testing, tuberculin (TB) testing, physical examinations, and/or
27 fingerprint-based background checks, but did not reimburse them for their travel expenses,
28 including mileage. At all times, Defendants were in control of scheduling the date and time for

1 the testing and/or physical examinations, selecting the provider or facility where the testing
2 and/or physical examinations were to take place, and determining the scope of the testing and/or
3 physical examinations. Defendants gave Plaintiff and class members strict instructions to obtain
4 drug testing, TB testing, and physical examinations, and Plaintiff and class members underwent
5 the testing and physical examinations for the sole benefit of Defendants. For example, Plaintiff
6 followed Defendants' instructions, traveled approximately 15-16 miles roundtrip in her personal
7 vehicle to Defendants' facility in San Marcos, California, and underwent Defendants' drug
8 testing. Plaintiff also traveled several miles roundtrip using her personal vehicle to obtain her
9 mandatory fingerprint-based background check from a Live Scan provider. Although
10 Defendants required Plaintiff and class members to undergo drug testing, TB testing, physical
11 examinations, and/or fingerprint-based background checks, Defendants failed to reimburse
12 them for their travel expenses.

13 125. Fourth, Defendants also mandated, on a company-wide basis, that Plaintiff and
14 class members purchase and maintain uniforms, which they were required to wear at work.
15 Defendants had a company-wide policy of requiring employees to purchase uniform shirts
16 bearing Defendants' logo directly from the company, at a cost of \$6.00 per uniform shirt.
17 During her employment, Plaintiff purchased 10 uniform shirts from Defendants for a total of
18 \$60.00. Although Defendants required Plaintiff and class members to purchase these items for
19 work, Defendants failed to reimburse them for this cost.

20 126. In addition, on a company-wide basis, Defendants expected Plaintiff and class
21 members to report to work in clean uniforms. Thus, Plaintiff and class members were required
22 to wash their uniform shirts more frequently than they would otherwise do laundry and incur
23 expenses for doing so. Moreover, due to the nature of assisted living care, Plaintiff's and class
24 members' uniform shirts would be exposed to various bodily fluids and chemicals, which made
25 them disinclined to mix their uniform shirts in with their other clothing in the wash. As a result,
26 Plaintiff and class members washed their uniform shirts separately from their other clothes,
27 increasing their overall laundry costs even more.

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127. Fifth, during the relevant time period, Defendants, on a company-wide basis, forced Plaintiff and class members to purchase basic cleaning supplies that were necessary for completion of their work-related duties. For example, Plaintiff spent up to \$200 per month purchasing brooms, dustbins, mops, air fresheners, and other cleaning supplies, but was never reimbursed for these expenses. Although Defendants required Plaintiff and class members to purchase and use their own cleaning supplies, Defendants did not reimburse them for these expenses.

128. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, such as company phones, company vehicles, uniforms, access to a laundering service, and cleaning supplies. Or Defendants could have reimbursed employees for the costs of their cellular phones, travel expenses, mileage, uniforms, uniform laundering expenses, and cleaning supply expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

129. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

130. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

131. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

132. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

1 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
2 226.7, 450, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
3 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
4 violations of those Labor Code sections not found in section 2699.5, including sections 516,
5 1182.12, and 2810.5.

6 133. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
9 wage order for Defendants' failure to compensate Plaintiff and other
10 aggrieved employees with all required overtime pay and failure to
11 properly calculate the overtime rates paid to Plaintiff and other aggrieved
12 employees, as alleged herein;
- 13 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and
14 the applicable IWC wage order for Defendants' failure to compensate
15 Plaintiff and other aggrieved employees with at least minimum wages for
16 all hours worked, as alleged herein;
- 17 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
18 applicable IWC wage order for Defendants' failure to provide Plaintiff
19 and other aggrieved employees with meal periods, as alleged herein;
- 20 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
21 IWC wage order for Defendants' failure to authorize and permit Plaintiff
22 and other aggrieved employees to take rest periods, as alleged herein;
- 23 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
24 wage order for failure to provide accurate and complete wage statements
25 to Plaintiff and other aggrieved employees, as alleged herein;
- 26 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
27 wage order for failure to maintain payroll records as alleged herein;

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- 1 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
2 earned wages upon termination, as alleged herein;
- 3 (h) Violation of Labor Code section 204 for failure to pay all earned wages
4 during employment, as alleged herein;
- 5 (i) Violation of Labor Code section 222.5 for failure to compensate Plaintiff
6 and other aggrieved employees for mandatory physical examinations
7 and/or drug testing, as set forth below;
- 8 (j) Violation of California Labor Code section 450 for Defendants'
9 compelling and/or coercing Plaintiff and other aggrieved employees to
10 patronize Defendants' business, as set forth below;
- 11 (k) Failing to pay Plaintiff and other aggrieved employees a split-shift
12 premium wage of an additional hour of pay at the minimum wage, when
13 they returned to work for an additional shift in the same day, after having
14 been clocked out for more than an hour, in violation of California Labor
15 Code section 1198 and the application IWC Order, as set forth below;
- 16 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
17 and other aggrieved employees for all business expenses necessarily
18 incurred, as alleged herein; and
- 19 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
20 provide written notice of information material to Plaintiff's and other
21 aggrieved employees' employment with Defendants, as set forth below.

22 134. At all relevant times herein, California Labor Code section 222.5 requires
23 employers to pay for the costs an employee incurs for obtaining any required medical or physical
24 examination.

25 135. During the relevant time period, Defendants implemented, on a company-wide
26 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
27 mandatory physical examinations, TB testing, and/or drug testing, but required them to do so at
28 their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff

1 and other aggrieved employees travel to a specified medical facility on their own time and use
2 their own means of transportation to undergo physical examinations, TB testing, and/or drug
3 testing. At all times, Defendants was in control of scheduling the date and time for the
4 examinations and/or testing, selecting the provider/facility where the examinations and/or
5 testing were to take place, and determining the scope of the examinations and/or testing.

6 136. For example, Plaintiff was instructed by Defendants to travel to Defendants'
7 facility in San Marcos, California, and obtain a drug test. Plaintiff followed Defendants'
8 instructions, traveled to the facility Defendants selected, and underwent the testing. Plaintiff
9 traveled 15-16 miles roundtrip (for approximately 40-60 minutes total) to and from Defendants'
10 facility in San Marcos, California, to undergo the drug testing.

11 137. However, Defendants did not compensate Plaintiff and/or other aggrieved
12 employees for the time they spent traveling to and from the medical facilities, for the time they
13 spent undergoing the physical examinations, TB testing, and/or drug testing, or reimburse them
14 for the travel expenses they incurred getting to and from the medical facilities. Defendants'
15 policy and/or practice of not paying for all costs Plaintiff and other aggrieved employees
16 incurred obtaining mandatory physical examinations, TB testing, and/or drug testing violates
17 California Labor Code section 222.5. Plaintiff and other aggrieved employees are entitled to
18 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 138. California Labor Code section 450 provides that an employer may not "compel
20 or coerce any employee, or applicant for employment, to patronize his or her employer, or any
21 other person, in the purchase of anything of value." An employer violates section 450 by forcing
22 an employee to patronize the employer's business in the purchase of a company-provided good.

23 139. During the relevant time period, Defendants had a company-wide policy of
24 requiring all employees to purchase uniform shirts bearing Defendants' logo directly from the
25 company. During her employment, Plaintiff was required to pay \$6.00 for each uniform shirt.
26 Over the course of her employment, Plaintiff purchased 10 uniform shirts from Defendants for
27 a total of \$60.00.

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1 140. Defendants' conduct of compelling and/or coercing Plaintiff and other aggrieved
2 employees to purchase goods from them is in violation of California Labor Code section 450.
3 Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to Labor
4 Code sections 2699(a), (f), and (g).

5 141. At all times relevant herein, Labor Code section 1198 provides that no employer
6 may employ an employee under conditions of labor that are prohibited by the applicable IWC
7 wage order. California Code of Regulations, Title 8, section 11050(4)(C) provides that, "When
8 an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in
9 addition to the minimum wage for that workday, except when the employee resides at the place
10 of employment." Plaintiff and other aggrieved employees did not reside at Defendants' retail
11 locations. California Code of Regulations, Title 8, defines a split shift as "a work schedule,
12 which is interrupted by non-paid non-working periods established by the employer, other than
13 bona fide rest or meal periods."

14 142. Defendants violated California Labor Code section 1198 and California Code of
15 Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and other
16 aggrieved employees a split-shift premium when they returned to work for an additional shift
17 in the same day, after having been clocked out for more than an hour.

18 143. For instance, Plaintiff was required to work a 4-hour shift in the morning and
19 then required to return four (4) hours later for her scheduled afternoon shift. Other aggrieved
20 employees have been similarly required to report to work for their scheduled morning shifts,
21 and then return four (4) hours later to complete their scheduled afternoon shifts. When this
22 occurs, Defendants did not always pay Plaintiff and other aggrieved employees an additional
23 hour at minimum wage.

24 144. Accordingly, Defendants required other aggrieved employees to work split shifts
25 but failed to pay them the split-shift premium wage in violation of California Labor Code section
26 1198. Defendants' failure to compensate other aggrieved employees with split-shift pay when
27 they returned to work for an additional shift in the same day, after having been clocked out for
28 more than an hour, violates California Labor Code section 1198. Plaintiff and other aggrieved

1 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 2699(a), (f), and (g).

3 145. California's Wage Theft Prevention Act was enacted to ensure that employers
4 provide employees with basic information material to their employment relationship at the time
5 of hiring, and to ensure that employees are given written and timely notice of any changes to
6 basic information material to their employment. Codified at California Labor Code section
7 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
8 provide written notice to employees containing basic and material payroll information,
9 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
10 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
11 regular payday designated by the employer, and any allowances claims as part of the minimum
12 wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

13 146. During the relevant time period, Defendants failed to provide Plaintiff and other
14 aggrieved employees with written notice that lists all the requisite information set forth in Labor
15 Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved
16 employees with written notice of basic information regarding their employment with
17 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved
18 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
19 2699(a), (f), and (g).

20 **TENTH CAUSE OF ACTION**

21 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

22 **Unlawful Business Practices**

23 **(Against all Defendants)**

24 147. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 148. Defendants are "persons" as defined by California Business & Professions Code
27 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
28 associations.

149. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

150. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

151. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, and paying Plaintiff and class members overtime at a lower rate than required by law by failing to properly calculate the regular rate of pay for purposes of overtime, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation of
2 California Labor Code sections 226(a), 1174(d), 1198, and the applicable
3 IWC Order, as alleged herein;

4 (f) Failing timely to pay all earned wages to Plaintiff and class members in
5 violation of California Labor Code section 204 and the applicable IWC
6 Order, as alleged herein;

7 (g) Failing to pay Plaintiff and class members the costs of mandatory
8 physical examinations and/or drug testing in violation of California Labor
9 Code section 222.5, as set forth below;

10 (h) Compelling and/or coercing Plaintiff and class members to patronize
11 Defendants' business in violation of California Labor Code section 450,
12 as set forth below;

13 (i) Failing to pay Plaintiff and class members a split-shift premium wage of
14 an additional hour of pay at the minimum wage, when they returned to
15 work for an additional shift in the same day, after having been clocked
16 out for more than an hour, in violation of California Labor Code section
17 1198 and the application IWC Order, as set forth below;

18 (j) Failing to reimburse Plaintiff and class members for all business expenses
19 necessarily incurred in violation of California Labor Code sections 2802,
20 as alleged herein; and

21 (k) Failing to provide written notice of information material to Plaintiff's and
22 class members' employment with Defendants in violation of Labor Code
23 section 2810.5(a)(1)(A)-(C), as set forth below.

24 152. At all relevant times herein, California Labor Code section 222.5 requires
25 employers to pay for the costs an employee incurs for obtaining any medical or physical
26 examination taken.

27 153. At all times relevant herein, Defendants implemented, on a company-wide basis,
28 an employer-imposed requirement that Plaintiff and class members undergo a mandatory

1 physical examination, TB test, and/or drug test, but required them to do so at their own expense.
2 As stated, Defendants had a company-wide policy requiring that all employees, including
3 Plaintiff and class members, travel to a specified medical facility using their own personal
4 vehicles or obtain alternate transportation to undergo drug testing, TB testing, and/or physical
5 examinations. At all times, Defendants were in control of scheduling the date and time for the
6 examination and/or testing, selecting the provider/facility where the examination and/or testing
7 was to take place, and determining the scope of the examination and/or testing.

8 154. During the relevant time period, Plaintiff was instructed by Defendants to travel
9 to Defendants' facility in San Marcos, California, and obtain a drug test. Plaintiff followed
10 Defendants' instructions, traveled to the facilities Defendants selected, and underwent the
11 testing. Plaintiff traveled 15-16 miles roundtrip (for approximately 40-60 minutes total) to and
12 from Defendants' facility in San Marcos, California, to undergo the drug testing.

13 155. However, Defendants did not compensate Plaintiff and class members for the
14 time they spent traveling to and from the medical facilities, or reimburse them for the travel
15 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or not
16 paying for all costs Plaintiff and class members incurred obtaining mandatory physical
17 examinations and/or drug testing is in violation of California Labor Code section 222.5.

18 156. At all relevant times herein, California Labor Code section 450 provides that an
19 employer may not "compel or coerce any employee, or applicant for employment, to patronize
20 his or her employer, or any other person, in the purchase of anything of value." An employer
21 violates section 450 by forcing an employee to patronize the employer's business in the
22 purchase of a company-provided good.

23 157. During the relevant time period, Defendants had a company-wide policy of
24 requiring all employees to purchase uniform shirts bearing Defendants' logo directly from the
25 company. During her employment, Plaintiff was required to pay \$6.00 for each uniform shirt.
26 Over the course of her employment, Plaintiff purchased 10 uniform shirts from Defendants for
27 a total of \$60.00.

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1 158. Defendants’ conduct of compelling and/or coercing Plaintiff and class members
2 to purchase goods from them violates California Labor Code section 450.

3 159. At all times relevant herein, Labor Code section 1198 provides that no employer
4 may employ an employee under conditions of labor that are prohibited by the applicable IWC
5 wage order. California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When
6 an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in
7 addition to the minimum wage for that workday, except when the employee resides at the place
8 of employment.” Plaintiff and class members did not reside at Defendants’ locations.
9 California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is
10 interrupted by non-paid non-working periods established by the employer, other than bona fide
11 rest or meal periods.”

12 160. Defendants violated California Labor Code section 1198 and California Code of
13 Regulations, Title 8, section 11050(4)(C), because Defendants have failed to pay Plaintiff and
14 class members a split-shift premium when they returned to work for an additional shift in the
15 same day, after having been clocked out for more than an hour. For instance, Plaintiff has been
16 required to work a 4-hour shift in the morning and then required to return four (4) hours later
17 for her scheduled afternoon shift. Other employees have been similarly required to report to
18 work for their scheduled morning shifts, and then return four (4) hours later to complete their
19 scheduled afternoon shifts. When this occurs, Defendants did not always pay Plaintiff and class
20 members an additional hour at minimum wage.

21 161. Accordingly, Defendants required Plaintiff and class members to work split
22 shifts but failed to pay them the split-shift premium wage in violation of California Labor Code
23 section 1198. Defendants’ failure to compensate Plaintiff and class members with split-shift
24 pay when they returned to work for an additional shift in the same day, after having been clocked
25 out for more than an hour, violates California Labor Code section 1198.

26 162. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
27 to ensure that employers provide employees with basic information material to their
28 employment relationship at the time of hiring, and to ensure that employees are given written

1 and timely notice of any changes to basic information material to their employment. Codified
2 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
3 time of hiring, an employer must provide written notice to employees containing basic and
4 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
5 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
6 any rates for overtime, the regular payday designated by the employer, and any allowances
7 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
8 § 2810.5(a)(1)(A)-(C).

9 163. At all relevant times, on information and belief, Defendants failed, on a
10 company-wide basis, to provide written notice to Plaintiff and class members that lists the
11 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
12 to provide Plaintiff and class members with written notice of basic information regarding their
13 employment with Defendants is in violation of Labor Code section 2810.5.

14 164. As a result of the violations of California law herein described, Defendants
15 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
16 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

17 165. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
18 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of this complaint; a
20 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
21 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
22 section 1021.5 and other applicable laws; and an award of costs.

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, et seq. –**

25 **Unfair Business Practices**

26 **(Against all Defendants)**

27 166. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 167. Defendants are “persons” as defined by California Business & Professions Code
2 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
3 associations.

4 168. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
5 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
6 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
7 enforce important rights affecting the public interest within the meaning of Code of Civil
8 Procedure section 1021.5.

9 169. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
10 of not paying Plaintiff and class members all meal and rest period premium wages due to them
11 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
12 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
13 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
14 employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
15 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
16 Plaintiff and class members as part of their employment with Defendants, and thus Defendants’
17 practice and/or policy of denying these statutory benefits constitutes an unfair business practice
18 in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

19 170. A violation of California Business & Professions Code sections 17200, *et seq.*
20 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
21 practices have violated the spirit of California’s meal and rest period laws and constitute acts
22 against the public policy behind these laws.

23 171. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
24 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
25 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
26 commences four years prior to the filing of this complaint; a permanent injunction requiring
27 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
28 members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section

1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay

1 minimum wages to Plaintiff and class members;

2 11. For general unpaid wages and such general and special damages as may be
3 appropriate;

4 12. For pre-judgment interest on any unpaid compensation from the date such
5 amounts were due, or as otherwise provided by law;

6 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
7 California Labor Code section 1194(a);

8 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

9 15. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Third Cause of Action**

12 16. That the Court declare, adjudge, and decree that Defendants violated California
13 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
14 willfully failing to provide all meal periods to Plaintiff and class members;

15 17. That the Court make an award to the Plaintiff and class members of one (1) hour
16 of pay at each employee's regular rate of pay for each workday that a meal period was not
17 provided;

18 18. For all actual, consequential, and incidental losses and damages, according to
19 proof;

20 19. For premiums pursuant to California Labor Code section 226.7(c);

21 20. For pre-judgment interest on any unpaid meal period premiums from the date
22 such amounts were due, or as otherwise provided by law;

23 21. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

25 22. For such other and further relief as the Court may deem equitable and
26 appropriate.

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As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;
24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee’s regular rate of pay for each workday that a rest period was not authorized and permitted;
25. For all actual, consequential, and incidental losses and damages, according to proof;
26. For premiums pursuant to California Labor Code section 226.7(c);
27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;
28. For attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and
29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;
31. For all actual, consequential, and incidental losses and damages, according to proof;
32. For injunctive relief pursuant to California Labor Code section 226(h);
33. For statutory penalties pursuant to California Labor Code section 226(e);
34. For attorneys’ fees and costs pursuant to California Labor Code section 226(e)(1); and
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1 35. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Sixth Cause of Action**

4 36. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
6 and/or meal and rest period premiums owed at the time of termination of the employment of
7 Plaintiff and other terminated class members;

8 37. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 38. For waiting time penalties according to proof pursuant to California Labor Code
11 section 203 for all employees who have left Defendants' employ;

12 39. For pre-judgment interest on any unpaid wages from the date such amounts were
13 due, or as otherwise provided by law;

14 40. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 41. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Seventh Cause of Action**

19 42. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
21 wages, minimum wages, and/or meal and rest period premiums during their employment;

22 43. For all actual, consequential and incidental losses and damages, according to
23 proof;

24 44. For statutory penalties according to proof pursuant to California Labor Code
25 section 210;

26 45. For pre-judgment interest on any unpaid wages from the date such amounts were
27 due, or as otherwise provided by law;

28 ///

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 47. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Eighth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
8 expenses and costs incurred by Plaintiff and class members;

9 49. For unpaid business-related expenses and such general and special damages as
10 may be appropriate;

11 50. For pre-judgment interest on any unpaid business-related expenses from the date
12 such amounts were due, or as otherwise provided by law;

13 51. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
16 or as otherwise provided by law; and

17 53. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Ninth Cause of Action**

20 54. That the Court declare, adjudge and decree that Defendants violated the
21 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
22 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
23 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
24 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
25 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
26 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
27 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
28 employment);); 222.5 (by failing to compensate for mandatory physical examinations and/or

1 drug testing); 450 (by compelling and/or coercing employees to patronize employer's business);
2 1198 (by failing to provide split-shift pay); 2802 (by failing to reimburse business expenses);
3 and 2810.5 (by failing to provide written notice of information material to employment);

4 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
5 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections
6 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
7 1198, 2802, and 2810.5;

8 56. For attorneys' fees and costs pursuant to California Labor Code section
9 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
10 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d),
11 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

12 57. For pre-judgment and post-judgment interest as provided by law; and

13 58. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Tenth Cause of Action**

16 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
17 to provide Plaintiff and class members all overtime wages due to them, failing to provide
18 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
19 class members all meal periods, failing to authorize and permit Plaintiff and class members to
20 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
21 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
22 timely to pay Plaintiff and class members all earned wages during employment, failing to
23 reimburse Plaintiff and class members for the costs of mandatory drug testing and/or physical
24 examinations, compelling and/or coercing Plaintiff and class members to patronize Defendants'
25 business, failing to properly compensate Plaintiff and class members for split shifts, failing to
26 reimburse Plaintiff and class members for business-related expenses, and failing to provide
27 written notice of information material to employment, constitutes an unlawful business practice
28 in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

63. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

69. For such other and further relief as the Court may deem equitable and appropriate.

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Dated: December 30, 2020

Respectfully submitted,

Capstone Law APC

By: 

Bevin Allen Pike
Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

Attorneys for Juanita Valladares

EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

October 21, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Juanita Valladares v. Mountain Shadows Support Group, et al.*

Dear PAGA Administrator:

This office represents Juanita Valladares in connection with her claims under the California Labor Code. Ms. Valladares was an employee of MOUNTAIN SHADOWS SUPPORT GROUP and/or MOUNTAIN SHADOWS ANCILLARY SERVICES. For the purpose of this letter, Ms. Valladares collectively refers to these entities as “MSSG.”

The employers may be contacted directly at the addresses below:

MOUNTAIN SHADOWS SUPPORT GROUP
970 LOS VALLECITOS BLVD., SUITE 240
SAN MARCOS CA 92069

MOUNTAIN SHADOWS ANCILLARY SERVICES
970 LOS VALLECITOS BLVD., STE 240
SAN MARCOS CA 92069

Ms. Valladares intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Valladares seeks relief on behalf of herself, the State of California, and other persons who are or were employed by MSSG in California as a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MSSG employed Ms. Valladares as a non-exempt, hourly paid Direct Care Staff Member from approximately January 7, 2019 to April 30, 2020. Ms. Valladares worked for MSSG at its location in Escondido, California. Ms. Valladares typically worked eight (8) to twelve (12) hours or more per day, and four (4) to five (5) days per week. Ms. Valladares’s primary job duties included, without

limitation, attending to residents' needs such as bathing, laundry, and feeding; cleaning and sanitizing the community home; administering medications; and supervising and accompanying residents to medical appointments.

MSSG has committed one or more of the following Labor Code violations against Ms. Valladares, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

MSSG's Company-Wide and Uniform Payroll and HR Practices

MOUNTAIN SHADOWS SUPPORT GROUP and MOUNTAIN SHADOWS ANCILLARY SERVICES are California corporations and operate approximately 30 licensed homes for intellectually disabled residents and consumers throughout San Diego and Riverside counties. Upon information and belief, MSSG maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Marcos, California for all non-exempt, hourly paid employees working for MSSG in California, including Ms. Valladares and other aggrieved employees. At all relevant times, MSSG issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Valladares and other aggrieved employees, regardless of their location or position.

Upon information and belief, MSSG maintains a centralized Payroll department at its corporate headquarters in San Marcos, California which processes payroll for all non-exempt, hourly paid employees working for MSSG in California, including Ms. Valladares and other aggrieved employees. Further, MSSG issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Valladares and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, MSSG utilized the same methods and formulas when calculating wages due to Ms. Valladares and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. Valladares's experience and counsel's review of those records currently available relating to Ms. Valladares's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Valladares reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

MSSG willfully failed to pay all overtime wages owed to Ms. Valladares and other aggrieved employees. During the relevant time period, Ms. Valladares and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant time period, MSSG had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to six (6) minute increments in their timekeeping system. MSSG's rounding policy resulted in the failure to compensate Ms. Valladares and other aggrieved employees fully for all hours worked, causing Ms. Valladares and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, MSSG's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Ms. Valladares and other aggrieved employees. To the extent MSSG's rounding policy has taken away time worked that was eligible for overtime, Ms. Valladares and other aggrieved employees were denied overtime pay for all hours worked.

Additionally, MSSG had, and continue to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads and failing to schedule meal periods, resulting in a failure to provide Ms. Valladares and other aggrieved employees with adequate meal period coverage. Ms. Valladares and other aggrieved employees worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to handle the workload. As a result, Ms. Valladares and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. MSSG knew or should have known that Ms. Valladares and other aggrieved employees were being made to work during unpaid meal periods, but failed to compensate them for this off-the-clock work.

MSSG knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Valladares and other aggrieved employees were performing their assigned duties during their meal periods, and were suffered or permitted to perform work for which they were not paid. MSSG also knew, or should have known, that it did not compensate Ms. Valladares and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked. Because Ms. Valladares and other aggrieved employees regularly worked shifts of eight (8) hours a day or more and/or shifts of ten (10) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Valladares and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, MSSG did not pay Ms. Valladares and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, MSSG paid Ms. Valladares and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MSSG failed to incorporate all compensation, including but not limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Valladares and other aggrieved employees worked overtime and received these other forms of pay, MSSG failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, Ms. Valladares and other aggrieved employees were eligible for and earned shift differential pay and/or incentive pay. During pay periods that Ms. Valladares and other aggrieved employees were paid overtime wages, MSSG failed to incorporate shift differential pay and/or incentive pay into Ms. Valladares's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, MSSG paid Ms. Valladares and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. MSSG's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Valladares and other aggrieved employees on a company-wide basis.

As an example, for the pay period ending on December 31, 2019, Ms. Valladares earned shift differential pay and/or incentive pay. During this same pay period, Ms. Valladares incurred overtime. However, Ms. Valladares's overtime and double-time rates of pay do not incorporate the shift differential pay and/or incentive pay. Instead, MSSG only paid Ms. Valladares for overtime work based upon her straight hourly rate of pay of \$12.25, paying her \$18.375 per hour ($\$12.25 \times 1.5$) for overtime and \$24.50 per hour ($\$12.00 \times 2$) for double-time she incurred. Therefore, during times when Ms. Valladares and other aggrieved employees worked overtime and received shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, MSSG failed to pay all overtime wages by paying lower overtime and double-time rates than required.

MSSG's failure to pay Ms. Valladares and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, MSSG had a company-wide policy and/or practice of rounding Ms. Valladares's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system, resulting in the failure to compensate Ms. Valladares and other aggrieved employees for all hours worked. Moreover, as also stated above, due to MSSG's company-wide policies and/or practices of understaffing while assigning heavy workloads, failing to schedule meal periods, and resultant lack of meal period coverage, Ms. Valladares and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, MSSG maintained and implemented a company-wide policy of requiring employees to travel on their own time and using their own personal vehicles to undergo mandatory drug testing, tuberculin (TB) testing, physical examinations, and/or fingerprint-based background checks. At all times, MSSG was in control of scheduling the date and time for the testing and/or physical

examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MSSG gave other aggrieved employees strict instructions to obtain drug testing, TB testing, physical examinations, and/or fingerprint-based background checks, and other aggrieved employees underwent the testing, physical examinations, and background checks for the sole benefit of MSSG. However, MSSG did not compensate other aggrieved employees for the time they spent traveling to and from the medical and facilities Live Scan providers and undergoing the mandatory drug testing, tuberculin (TB) testing, physical examinations, and/or fingerprint-based background checks.

Thus, MSSG did not pay minimum wages for all hours worked by Ms. Valladares and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MSSG did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, MSSG regularly failed to pay at least minimum wages to Ms. Valladares and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Valladares and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

During the relevant time period, as stated, MSSG had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. As a result, Ms. Valladares and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods altogether. Further, as stated, MSSG had a company-wide practice of failing to schedule meal periods, which further caused Ms. Valladares and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Valladares missed her meal periods three (3) times per month in order to provide care and supervision for residents.

In addition, in conjunction with MSSG's practice of understaffing, MSSG forced Ms. Valladares and other aggrieved employees to work through their meal periods by requiring them to remain on or near the premises for their meal periods. Because Ms. Valladares and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, MSSG effectively maintained control over Ms. Valladares and other aggrieved employees during meal periods.

To the extent MSSG required Ms. Valladares and other aggrieved employees to sign written "on-duty" meal period agreements, MSSG's "Agreement for On-Duty Meal Period" does not comply with Wage Order 5's requirements for on-duty meal periods. Wage Order 5 permits on-duty meal periods only when (a) the employees eat with the clients during their meals and are provided with the same meal the clients eat at no charge; or (b) the employee is the sole person in charge and, on the day shift, and is provided a meal at no charge. Cal. Code Regs., tit. 8, § 11050(11)(E). Other than the on-duty meal policy which states that employees may be required to take on-duty meal periods, MSSG, on information and belief, does not have any policies with respect to providing Ms. Valladares and other aggrieved employees with compliant meal periods. Throughout her employment, Ms. Valladares was required eat with and attend to residents during her meal periods, and thus remained on-duty. Ms. Valladares was not provided with the same meal as residents at no charge, but instead ate food that she brought from home. Furthermore, MSSG's on-duty meal policy did not inform Ms. Valladares and other aggrieved employees that on-duty meal periods must be timely or that they are entitled to a 30-minute on-duty meal period.

MSSG also did not schedule second meal periods and had no policy for permitting Ms. Valladares and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Valladares would work in excess of ten (10) hours per day, and was not provided her second meal period during these shifts. MSSG did not present Ms. Valladares and other aggrieved employees with the opportunity to voluntarily choose whether to waive their second 30-minute meal period on any given day. Ms. Valladares and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, MSSG engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of MSSG's practices and/or policies, Ms. Valladares and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that MSSG did pay Ms. Valladares and other aggrieved employees premium pay for missed, late, and interrupted meal periods, MSSG did not pay Ms. Valladares and other aggrieved employees at the correct rate of pay for premium wages because MSSG systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, MSSG failed to provide Ms. Valladares and other aggrieved

employees compliant meal periods in violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

Accordingly, MSSG failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Valladares and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, MSSG regularly failed to authorize and permit Ms. Valladares and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MSSG's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Valladares and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. MSSG also failed to schedule rest periods, which, coupled with MSSG's failure to provide adequate rest period coverage, further led to Ms. Valladares and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, MSSG maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Valladares and/or other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, MSSG's company-wide on-premises rest period policy prevented Ms. Valladares and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods when they were not in sole charge of residents.

As a result of MSSG's practices and policies, Ms. Valladares and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Valladares would miss her rest periods due to MSSG's policies of assigning heavy workloads and failing to provide sufficient coverage. MSSG failed to authorize and permit Ms.

Valladares and other aggrieved employees to take another rest period when their rest periods were interrupted to respond to the needs of residents.

MSSG have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Alternatively, to the extent that MSSG did pay Ms. Valladares and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MSSG did not pay Ms. Valladares and other aggrieved employees at the correct rate of pay for premium wages because MSSG failed to include all forms of compensation, such as shift, differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, MSSG denied Ms. Valladares and other aggrieved employees rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

Accordingly, MSSG failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Valladares and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MSSG has not provided Ms. Valladares and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MSSG has knowingly and intentionally provided Ms. Valladares and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MSSG issued uniform wage statements to Ms. Valladares and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MSSG violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because MSSG did not record the time Ms. Valladares and other aggrieved employees spent working off-the-clock, and improperly rounded their total hours worked, MSSG did not list the correct amount of gross wages and net wages earned by Ms. Valladares and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, MSSG failed to accurately list the total number of the hours worked by Ms. Valladares and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of

pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because MSSG did not calculate Ms. Valladares's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, MSSG did not list the correct amount of gross wages earned by Ms. Valladares and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Valladares and other aggrieved employees in violation of section 226(a)(5). MSSG also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, MSSG issued uniform wage statements to Ms. Valladares and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Valladares's and other aggrieved employees' wage statements incorrectly list MSSG's address as "2067 W El Norte Pkwy, Escondido, CA 92026", but, according to the California Secretary of State's website, MSSG's address is "970 Los Vallecitos Blvd., Suite 240, San Marcos, CA 92069." *See example paystub below.*

DEPT. CLOCK VCHR. NO. 070
64C [REDACTED] 000510001

Earnings Statement **ADP**

MOUNTAIN SHADOWS SUPPORT GROUP
2067 W EL NORTE PKWY
ESCONDIDO, CA 92026

Period Beginning: 12/01/2019
Period Ending: 12/15/2019
Pay Date: 12/23/2019

Taxable Marital Status: [REDACTED]
Exemptions/Allowances:
Federal: [REDACTED]
CA: [REDACTED]

JUANITA VALLADARES
[REDACTED]
[REDACTED]

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of her or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as

required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MSSG willfully failed to maintain accurate payroll records for Ms. Valladares and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Valladares's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, MSSG engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Valladares and other aggrieved employees. Furthermore, in light of MSSG's failure to provide Ms. Valladares and other aggrieved employees with second 30-minute meal periods to which they were entitled, MSSG kept no records of meal start and end times for second meal periods.

Because MSSG failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Valladares and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Valladares and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MSSG failed to pay Ms. Valladares and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves her or her employment, her or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting.

MSSG willfully failed to pay Ms. Valladares and other aggrieved employees who are no longer employed by MSSG all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving MSSG's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, MSSG implemented, on a company-wide basis, an employer-imposed requirement that Ms. Valladares and other aggrieved employees undergo mandatory physical examinations, TB testing, and/or drug testing, but required them to do so at their own expense. As stated, MSSG had a company-wide policy requiring that Ms. Valladares and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo physical examinations, TB testing, and/or drug testing. At all times, MSSG was in control of scheduling the date and time for the examinations and/or testing, selecting the provider/facility where the examinations and/or testing were to take place, and determining the scope of the examinations and/or testing.

For example, Ms. Valladares was instructed by MSSG to travel to MSSG's facility in San Marcos, California, and obtain a drug test. Ms. Valladares followed MSSG's instructions, traveled to the facility MSSG selected, and underwent the testing. Ms. Valladares traveled 15-16 miles roundtrip (for approximately 40-60 minutes total) to and from MSSG's facility in San Marcos, California, to undergo the drug testing.

However, MSSG did not compensate Ms. Valladares and/or other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the physical examinations, TB testing, and/or drug testing, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. MSSG's policy and/or practice of not paying

for all costs Ms. Valladares and other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, and/or drug testing violates California Labor Code section 222.5.

Ms. Valladares and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

During the relevant time period, MSSG had a company-wide policy of requiring all employees to purchase uniform shirts bearing MSSG's logo directly from the company. During her employment, Ms. Valladares was required to pay \$6.00 for each uniform shirt. Over the course of her employment, Ms. Valladares purchased 10 uniform shirts from MSSG for a total of \$60.00.

MSSG's conduct of compelling and/or coercing Ms. Valladares and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

MSSG violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because MSSG failed to pay Ms. Valladares and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For instance, Ms. Valladares was required to work a 4-hour shift in the morning and then required to return four (4) hours later for her scheduled afternoon shift. Other aggrieved employees have been similarly required to report to work for their scheduled morning shifts, and then return four (4) hours later to complete their scheduled afternoon shifts. When this occurs, MSSG did not always pay Ms. Valladares and other aggrieved employees an additional hour at minimum wage. At all relevant times, Ms. Valladares and other aggrieved employees did not reside at MSSG's locations.

MSSG's failure to compensate Ms. Valladares and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Ms. Valladares and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of her or her job. The purpose of Labor Code sections 2800 and 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, MSSG had a company-wide policy of requiring Ms. Valladares and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but MSSG failed to reimburse them for the costs of their work-related cellular phone expenses. Ms. Valladares and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing work assignments with management. For example, Ms. Valladares would spend approximately one (1) hour per week speaking with her supervisor about work-related matters. Although MSSG required Ms. Valladares and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, MSSG failed to fully reimburse them for this cost.

Second, MSSG, on a company-wide basis, required Ms. Valladares and other aggrieved employees use their own personal vehicles to carry out company business, such as driving residents to medical appointments and attending requisite trainings, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Valladares periodically drove 20 miles roundtrip to in her personal vehicle to accompany residents to their medical appointments. Ms. Valladares was also required to drive 15 miles each way from her home to Escondido, California, to attend mandatory in-person training courses at MSSG's San Marcos, California office, but was never reimbursed for her mileage to and from these trainings. Although MSSG required Ms. Valladares and other aggrieved employees to utilize their own vehicles and complete these tasks as part of their job duties, MSSG never reimbursed them for all of their travel expenses.

Third, MSSG also had a company-wide policy of requiring Ms. Valladares and other aggrieved employees to travel in their own personal vehicles or obtain alternate transportation to undergo mandatory drug testing, tuberculin (TB) testing, physical examinations, and/or fingerprint-based background checks, but did not reimburse them for their travel expenses, including mileage. At all times, MSSG were in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MSSG gave Ms. Valladares and other aggrieved employees strict instructions to obtain drug testing, TB testing, and physical examinations, and Ms. Valladares and other aggrieved employees underwent the testing

and physical examinations for the sole benefit of MSSG. For example, Ms. Valladares followed MSSG's instructions, traveled approximately 15-16 miles roundtrip in her personal vehicle to MSSG's facility in San Marcos, California, and underwent MSSG's drug testing. Ms. Valladares also traveled several miles roundtrip using her personal vehicle to obtain her mandatory fingerprint-based background check from a Live Scan provider. Although MSSG required Ms. Valladares and other aggrieved employees to undergo drug testing, TB testing, physical examinations, and/or fingerprint-based background checks, MSSG failed to reimburse them for their travel expenses.

Additionally, MSSG, on a company-wide basis, required Ms. Valladares and other aggrieved employees to obtain and pay for fingerprint-based background checks through the Department of Health Services, which were required for their continued employment. MSSG had a uniform policy of only reimbursing employees if they passed the background check and were continuously employed by MSSG ("I understand that this money will be refunded to me after six months of employment if a satisfactory criminal record is received by [MSSG], so long as I am still employed at [MSSG]. In the event I am not cleared for employment by the Department of Health Services, I understand that the money will be forfeited and I will be subject to immediate termination"). Thus, MSSG failed to reimburse other aggrieved employees who were employed by MSSG for less than six (6) months and who did not pass their background checks for the costs of obtaining these fingerprint-based background checks.

Fourth, MSSG also mandated, on a company-wide basis, that Ms. Valladares and other aggrieved employees purchase and maintain uniforms, which they were required to wear at work. MSSG had a company-wide policy of requiring employees to purchase uniform shirts bearing MSSG's logo directly from the company, at a cost of \$6.00 per uniform shirt. During her employment, Ms. Valladares purchased 10 uniform shirts from MSSG for a total of \$60.00. Although MSSG required Ms. Valladares and other aggrieved employees to purchase these items for work, MSSG failed to reimburse them for this cost.

In addition, on a company-wide basis, MSSG expected Ms. Valladares and other aggrieved employees to report to work in clean uniforms. Thus, Ms. Valladares and other aggrieved employees were required to wash their uniform shirts more frequently than they would otherwise do laundry and incur expenses for doing so. Moreover, due to the nature of assisted living care, Ms. Valladares's and other aggrieved employees' uniform shirts would be exposed to various bodily fluids and chemicals, which made them disinclined to mix their uniform shirts in with their other clothing in the wash. As a result, Ms. Valladares and other aggrieved employees washed their uniform shirts separately from their other clothes, increasing their overall laundry costs even more.

Fifth, during the relevant time period, MSSG, on a company-wide basis, forced Ms. Valladares and other aggrieved employees to purchase basic cleaning supplies that were necessary for completion of their work-related duties. For example, Ms. Valladares spent up to \$200 per month purchasing brooms, dustbins, mops, air fresheners, and other cleaning supplies, but was never reimbursed for these expenses. Although MSSG required Ms. Valladares and other aggrieved employees to purchase and use their own cleaning supplies, MSSG did not reimburse them for these expenses.

MSSG could have provided Ms. Valladares and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, uniforms, access to a laundering service, and cleaning supplies. Or, MSSG could have reimbursed employees for the costs of their cellular phones, travel expenses, mileage, fingerprint-based background checks, uniforms, uniform laundering expenses, and cleaning supply expenses. Instead, MSSG passed these operating costs off

onto Ms. Valladares and other aggrieved employees. At all relevant times, Ms. Valladares did not earn at least two (2) times the minimum wage.

Thus, MSSG had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Valladares and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

MSSG failed to provide Ms. Valladares and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). MSSG's failure to provide Ms. Valladares and other aggrieved employees with written notice of basic information regarding their employment with MSSG is in violation of Labor Code section 2810.5.

Ms. Valladares and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MSSG, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Valladares's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Valladares seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in

particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Valladares, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against MSSG for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Valladares seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: MOUNTAIN SHADOWS SUPPORT GROUP (via U.S. Certified Mail); MOUNTAIN SHADOWS ANCILLARY SERVICES (via U.S. Certified Mail)



7020 0090 0001 3768 0751

Stone
LAW APC
1000
Park East, Ste 1000
San Marcos, CA 92067

MOUNTAIN SHADOWS SUPPORT GROUP
970 LOS VALLECITOS BLVD., SUITE 240
SAN MARCOS CA 92069



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OFFICIAL USE

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☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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MOUNTAIN SHADOWS SUPPORT GROUP

Street and Apt. No., or PO Box No.

970 LOS VALLECITOS BLVD., SUITE 240

City, State, ZIP+4®

SAN MARCOS CA 92069

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Valladares v.
Mountain Shadows
Support Group

tone
LAW APC
ury Park East, Ste 1000
ss, CA 90067

CERTIFIED MAIL



7020 0090 0001 3768 0744

MOUNTAIN SHADOWS ANCILLARY SERVICES
970 LOS VALLECITOS BLVD., STE 240
SAN MARCOS CA 92069



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970 LOS VALLECITOS BLVD., STE 240
SAN MARCOS CA 92069



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- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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er \$500)

Domestic Return Receipt

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Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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Street and Apt. No., or PO Box No.

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City, State, ZIP+4®

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Valladares v.
Mountain Shadows
Ancillary Services

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MOUNTAIN SHADOWS ANCILLARY SERVICES**970 LOS VALLECITOS BLVD., STE 240
SAN MARCOS CA 92069**

9590 9402 5816 0034 8470 28

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0744

PS Form 3811, July 2015 PSN 7530-02-000-9053

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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOUNTAIN SHADOWS SUPPORT GROUP**970 LOS VALLECITOS BLVD., SUITE 240
SAN MARCOS CA 92069**

9590 9402 5816 0034 8470 11

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0751

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **December 30, 2020**, I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Erick R. Altona (SBN: 120452)
era@lfap.com

Vanessa R. Negrete (SBN: 239689)
vrn@lfap.com

LOUNSBERY FERGUSON ALTONA &
PEAK LLP

960 Canterbury Place, Suite 300
Escondido, California 92025-3870
Tel.: (760) 743-1201
Fax: (760) 743-9926

Attorneys for Defendant
MOUNTAIN SHADOWS SUPPORT
GROUP and MOUNTAIN SHADOWS
ANCILLARY SERVICES

() **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

(X) **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the documents(s)

() **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

() **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

Executed on **December 30, 2020**, at Los Angeles, California.

Xochitl Tapia
Type or Print Name


Signature