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ISAC MARTINEZ,
and all putative class members

VENTURA
SUPERIOR COURT
FILED

JAN 05 2021

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

MARIANA SUAZO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

ISAC MARTINEZ, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

PATRICK TREACY INC., a California
corporation, TREACY VILLA, a business
entity type unknown, and TREACY
HOUSE, a business entity type unknown,
and DOES 1-50 inclusive,

Defendants.

Case No.: 56-2021-00549236-CU-OE-VTA

**CLASS ACTION COMPLAINT
FOR:**

1. Failure to Pay due to Interrupted Meal Period
2. Failure to Pay All Wages Owed
3. Failure to Provide Rest Breaks
4. Failure to Uninterrupted Meal Breaks & Second Meal Breaks
5. Failure to Timely Pay All Wages Owed, Waiting Time Penalties
6. Failure to Provide and Maintain Timely, Accurate, Itemized Wage Statements
7. Unlawful Business Practices Bus & Prof. Code §17200
8. Private Attorneys General Act Penalties §2698 et seq

JURY TRIAL DEMANDED

1 Plaintiff ISAC MARTINEZ, individually, and on behalf of all others similarly
2 situated, all aggrieved employees, and as a Private Attorney General for the State of
3 California (collectively “Plaintiff”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an employment class and PAGA representative action on behalf of over
6 100 hourly, non-exempt employees against their employer for violations of numerous wage
7 and hour laws. Plaintiff employees bring this employment class and representative action
8 complaint on behalf of themselves, and all others similarly situated against PATRICK
9 TREACY, TREACY VILLA AND TREACY HOUSE, and the other Defendants DOES
10 1-50, inclusive, (hereafter collectively “Defendant” or “Defendants”).

11 2. Defendant, is a 24- hour skilled nursing and rehabilitation facility, where Plaintiff
12 worked as a medical technician from September 2019 until May 2020, earning
13 approximately \$14 per hour. Plaintiff and the proposed class earn at or near minimum
14 wage.

15 3. As described further below, Defendants have violated the California Labor Code
16 by (1) failing to pay for all hours worked due to interrupted meal periods (§218, 510, 512,
17 558, 1194, 1197, 1197.1, 1198, 1199, 2699); (2) failing to timely pay all wages owed (§201,
18 202, 2698); (3) failing to provide rest breaks (§226, 226.7, 512, 558, 1198, 2698); (4)
19 failing to timely provide uninterrupted meal breaks and second meal breaks (§226, 226.7,
20 512, 558, 1198, 2699); (6) failing to provide timely, accurate wage statements and payroll
21 records (§226, 1174, 2699); and (7) unlawful and unfair business practices (Bus. & Prof.
22 Cod3 §17200, et. seq.). Plaintiff further alleges that Defendants are liable for civil penalties
23 under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq.

24 4. The class claims in this action are brought pursuant to Code of Civil Procedure
25 (“CCP”) §382, seeking recovery for unpaid wages, including overtime wages, missed meal
26 and rest period penalty pay, statutory and waiting time penalties, injunctive and other
27 equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to the class and
28 representative action procedures provided for under California law, Plaintiff, on behalf of

1 themselves and proposed Class Members (also referred to as “Class”), and aggrieved
2 employees, also seeks injunctive relief and restitution of all benefits Defendants have
3 received from their unlawful actions as alleged herein. Plaintiff has also provided notice of
4 these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development
5 Agency (“LWDA”) and now brings this First Amended Complaint, including claims for
6 civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et
7 seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

8 5. The “Class Period” is designated as the four-year period prior to the filing of this
9 Complaint through the date of final disposition of this action. From the start of the Class
10 Period through the present, Defendants have had a policy and/or practice of among other
11 violations: rounding employee time card entries, frequently failing to provide meal and rest
12 breaks, frequently issuing inaccurate wage statements, ignoring and violating California
13 wage and hour laws in their business as more fully set forth below.

14 6. The “PAGA Period” is defined herein commences one year prior to the date of
15 filing the PAGA Notice letter with the LWDA.

16 7. Defendants have treated all persons employed in California in such a way as to
17 violate California’s laws governing conditions of employment and payment of wages
18 owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of
19 the law refused to pay the Class Members all wages owed, including overtime wages and
20 meal and rest break penalty wages. Defendants have violated numerous Labor Code
21 provisions, as set forth herein. Class Members are owed their back pay, plus interest and/or
22 premiums and penalties under Business and Professions Code section 17203 to compensate
23 Class Members and Class Members for the delay in receiving wages due.

24 8. Defendants, by and through their actions, have engaged in unfair competition,
25 requiring restitution to persons affected and disgorgement of profits so obtained.

26 **THE PARTIES**

27 9. Plaintiff ISAC MARTINEZ is an individual who resides in California and was
28 employed by Defendants from September 2019 until May 2020.

1 10. Defendant PATRICK TREACY INC., is a California domestic corporation
2 duly registered to do business in California, with an address at 3482 Loma Vista Rd.,
3 Ventura, CA 93003-3026. PATRICK TREACY INC., exercised control over the wages,
4 hours, and/or working conditions of Plaintiff and members of the proposed class
5 throughout the liability period.

6 11. Defendant TREACY VILLA, business entity type unknown, with an address
7 at 3482 Loma Vista Rd., Ventura, CA 93003-3026. TREACY VILLA, exercised control
8 over the wages, hours, and/or working conditions of Plaintiff and members of the
9 proposed class throughout the liability period.

10 12. Defendant TREACY HOUSE, business entity type unknown, is a California
11 domestic corporation duly registered to do business in California, with an address at 3482
12 Loma Vista Rd., Ventura, CA 93003-3026. TREACY HOUSE, exercised control over the
13 wages, hours, and/or working conditions of Plaintiff and members of the proposed class
14 throughout the liability period.

15 13. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their
16 true names and capacities are unknown to Plaintiff. When their true names and capacities
17 are ascertained, Plaintiff will amend this complaint by inserting their true names and
18 capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the
19 fictitiously named Defendants is responsible in some manner for the occurrences herein
20 alleged, and that the damages sustained by Plaintiff, Class Members, and Aggrieved
21 Employees herein alleged were proximately caused by such Doe Defendants.

22 14. Plaintiff is informed and believes and thereon alleges that each Defendant,
23 directly or indirectly, or through agents or other persons, employed Plaintiff and other
24 members of the Class, and exercised control over their wages, hours, and working
25 conditions. Plaintiff is informed and believes and thereon alleges that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried
27 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
28 each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

15. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff, Aggrieved Employees and many of the Class Members in this case that arose in this county.

16. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

17. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

18. During the Class Period and PAGA Period, Defendants committed various violations of the California Labor Code, the CCR, the UCL and IWC Wage Order 5, as alleged below in more detail. Defendants enforce multiple policies that violate state law which are intended to increase its own profits to the detriment of its workers.

19. Defendants employed, upon information and belief, more than 100 current and former non-exempt employees (hereafter "Class Members" or "Class") during the Class Period.

20. Defendants failed to pay for all hours worked; timely provide and/or authorize meal breaks; timely provide and/or authorize rest breaks; and, provide timely, accurate wage statements and maintain required payroll records. These practices also constitute unlawful and unfair business practices. These policies and practices have deprived Plaintiff and Class Members, and Aggrieved Employees of payment for all hours worked, and further damages, as set forth below, and render Defendants liable for damages, including penalties under PAGA.

1 21. Failure to pay for all hours worked due to Interrupted Meal Periods. Defendants
2 has been engaged in many unlawful employment practices which resulted in underpayment
3 for hours worked each pay period, including overtime hours worked, as more fully set forth
4 below:

5 A. Work Performed During Unpaid Meal Periods. Defendants failed to
6 permit Plaintiff and aggrieved employees to take timely, off-duty, meal
7 breaks of “not less than 30 minutes” for each five consecutive hours of
8 work in violation of Labor Code §§226.7 and 512. Plaintiff’s unpaid meal
9 periods were frequently interrupted with work.

10 B. Failure to pay wages- required minimum wage. Defendants failed to pay
11 Plaintiff and aggrieved employees for all hours worked as a result of
12 Defendant’s practice of requiring employees to work during mandated
13 meal and rest periods. Based on Defendant’s unlawful conduct described
14 above, and because Plaintiff and the aggrieved employees were paid at or
15 near minimum wage, Defendant’s failure to pay for all hours worked,
16 including overtime, resulted in a payment of less than the minimum wage
17 for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and
18 Wage Order 5-2001 4(B). Defendants are liable for civil penalties
19 pursuant to Labor Code §§558 and 2699 *et seq.*

20 22. Failure to timely pay all wages owed. Defendants failed to timely pay all wages
21 owed by failing to pay all wages due upon separation as well as failing to pay all wages
22 owed twice per month.

23 A. Failure to pay wages due upon termination. As set forth above, due to
24 Defendant’s unlawful employment practices, Defendants knowingly and
25 willfully failed to pay all compensation due and owing to Plaintiff at the
26 time employment terminated as required by Cal. Lab. Code §§201 and
27 202.
28

1 B. Failure to pay all wages owed twice per month. Defendants were required
2 to pay Plaintiff and employee all wages earned twice during each calendar
3 month pursuant to Labor Code §204(a). Defendants failed to pay all
4 wages earned to employees as a result of the unlawful employment
5 policies and practices discussed herein. As a result of these practices,
6 aggrieved employees were underpaid for hours worked, including
7 overtime and penalty wages, and this underpayment resulted in a failure
8 to pay all wages owed twice per month.

9 23. Rest periods. During the class period, Defendants failed to maintain a compliant
10 meal period policy and practice. Defendants did not authorize or permit all of its hourly
11 employees to take at least a ten-minute rest period in which they were relieved of all duties,
12 for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7,
13 §512 and Wage Order 5-2001 12(A). According to Plaintiff, his rest breaks, and those of
14 his coworkers, were frequently interrupted. Defendants failed to pay Plaintiff and similarly
15 situated employees all premium compensation (one hour of pay at the employee's regular
16 rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for
17 these missed and/or interrupted rest periods.

18 24. Meal periods. During the class period, Defendants failed to maintain a
19 compliant meal period policy and practice. Defendants failed to consistently permit
20 Plaintiff, Class Members, and Aggrieved Employees to take timely, off-duty, meal breaks
21 of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor
22 Code §§226.7 and 512. On many occasions, Plaintiff and aggrieved employees were
23 unable to take a compliant meal period because meal periods were frequently interrupted.
24 Defendants failed to permit Plaintiff, Class Members, and Aggrieved Employees to take
25 timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours
26 of work in violation of Labor Code §§226.7 and 512. Plaintiff, Class Members, and
27 Aggrieved Employees were often not paid penalty wages for missed and non-compliant
28 meal periods.

1 25. Wage statement and record keeping violations. Defendants knowingly and
2 intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff, Class
3 Members, and Aggrieved Employees in accordance with Labor Code §§ 226 and 1174.
4 Derivative of the claims alleged above, the statements provided to Plaintiffs, Class
5 Members, and Aggrieved Employees have not accurately reflected actual gross wages
6 earned, including overtime and meal/rest premiums and, total hours worked. Such failures
7 caused injury to Plaintiff and others, by, among other things, impeding them from knowing
8 the total hours worked and the amount of wages to which they are and were entitled.

9 26. Unlawful business practices. Based upon the above allegations, Defendants
10 engaged in unfair competition.

11 **CALIFORNIA CLASS ACTION ALLEGATIONS**

12 27. Plaintiff brings this action on behalf of himself, and all other persons similarly
13 situated, to recover from Defendants for failure to comply with California wage and hour
14 laws, and for claims under Business and Professions Code § 17200.

15 28. This action has been brought and may properly be maintained as a class action
16 pursuant to the provisions of Code of Civil Procedure § 382 and/or a representative action
17 under Business & Professions Code §§17200 et seq. and Labor Code §2699 because the
18 proposed class is ascertainable and there is a well-defined community of interest. Plaintiffs
19 are among in excess of 100 employees with like job titles, duties, and hourly wages, who
20 have been similarly injured by Defendants' uniform, unlawful conduct.

21 29. The "Relevant Time Period" or proposed "Class Period" as defined herein
22 commences four years prior to the date of filing this Complaint.

23 30. Plaintiff brings this action on their behalf and as a class action under Cal. Code
24 of Civil Procedure §382 on behalf of the following defined groups:

25 Proposed Class:

26 "All persons who are employed or have been employed by Defendants in the
27 State of California as hourly, non-exempt workers during the period of the
28 relevant statute of limitations."

Proposed Sub-classes:

- A. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shift in excess of five (5) hours.
- B. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours.
- C. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of eight (8) hours.
- D. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of three and one-half hours (3 ½), but less than or equal to six (6) hours.
- E. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.
- F. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who separated their employment from Defendants.
- G. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period

1 of the relevant statute of limitations, who received pay for one or more
2 pay periods.

3 31. This action is brought, and may properly be maintained, as a class action under
4 CCP §382 because there is a well-defined community of interest in the litigation, and the
5 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

6 A. Numerosity: The Proposed Class is so numerous that joinder of all
7 members is impractical. Plaintiff is informed and believes, and on that
8 basis alleges, that during the relevant time period, Defendants employed
9 over 100 putative Class Members who are geographically dispersed and
10 who satisfy the definition of the proposed Class. As such, a class action
11 is the only available method for the fair and efficient adjudication of this
12 controversy. Membership in the Proposed Class can be easily ascertained
13 by an examination and analysis of employee and payroll records, among
14 other records within Defendants’ possession and control.

15 B. Typicality: Plaintiff’s claims are typical of the claims of the Class
16 Members. Plaintiff, like others similarly situated, was subjected to
17 Defendants’ common, unlawful policies, practices, and procedures
18 described above. The Plaintiff’s positions at the company was typical of
19 those of other Class Members. Plaintiff’s claims are typical of the claims
20 of each Class Member because each have sustained damages arising out
21 of and caused by Defendants’ common course of conduct, as alleged
22 herein. As such, Plaintiff has the same interests in this matter as all
23 members of the Class.

24 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
25 members of the Class. Plaintiff has retained counsel competent and
26 experienced in complex class actions and California labor and
27 employment litigation.
28

1 D. Commonality: Common questions of law and fact exist, including but not
2 limited to the following:

- 3 i. Whether Defendants violated wage and hour laws by failing
4 to provide all required, duty-free, 30-minute minimum meal
5 periods;
- 6 ii. Whether Defendants violated wage and hour laws by failing
7 to provide all required rest periods;
- 8 iii. Whether Defendants' policy and practice concerning meal
9 breaks was unlawful;
- 10 iv. Whether Defendants' policy and practice concerning rest
11 breaks was unlawful;
- 12 v. Whether Defendants unlawfully failed to keep and furnish
13 Class Members with accurate, itemized records of hours
14 worked, in violation of Labor Code §§ 226 and 1174;
- 15 vi. Whether Defendants' policy and practice of failing to pay
16 employees all wages owed twice per month violates Labor
17 Code §204(a);
- 18 vii. Whether Defendants' timekeeping practices resulted in
19 payment of wages less than the statutory minimum wage;
- 20 viii. Whether Defendants' policy and practice of failing to pay its
21 employees all wages due within the time required by law
22 after their employment ended violates the law and warrants
23 waiting time penalties under Cal. Labor Code §§ 200, 201,
24 202, 203, and 204;
- 25 ix. The proper measure of damages sustained and the proper
26 measure of restitution recoverable by Plaintiff, the Class
27 Members, and Subclass Members;
- 28

- x. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xi. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xii. Whether Defendants' conduct was willful and reckless;
- xiii. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xiv. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

32. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on

1 review of corporate records and key testimony of Defendants' corporate representatives.
2 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
3 proposed class counsel will employ competent experts and consultants in the field to
4 determine and review evidence for both issues of liability and damages in a scientifically
5 reliable manner.

6 33. Plaintiff requests, pursuant to Rule 1857(a)(l) and Rule 3.766 of the California
7 Rules of Court, that the absent Class and Subclass Members be notified by the best notice
8 practicable under the circumstances, including individual notice to all members who can
9 be identified through reasonable effort. The names and address of the Class and Subclass
10 Members are available from Defendants.

11 **FIRST CAUSE OF ACTION**

12 FAILURE TO PAY WAGES, INCLUDING OVERTIME WAGES, AGAINST ALL 13 DEFENDANTS

14 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

15 34. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 35. Section 2(K) or Wage Order 5 defines "hours worked" as "the time during which
18 an employee is subject to the control of an employer, and including all the time the
19 employee is suffered or permitted to work, whether or not required to do so."

20 36. Defendants failed to permit Plaintiff and aggrieved employees to take timely,
21 off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work
22 in violation of Labor Code §§226.7 and 512. Plaintiff's unpaid meal periods were
23 frequently interrupted with work.

24 37. Employees are employed at or near minimum wage, thus failure to pay all hours
25 worked, including overtime hours worked, results in a payment of wages lower than the
26 statutory minimum wages in violation of Labor Code §1197, and the Class is entitled to
27 penalties under Labor Code §1197.1, as described more fully below.
28

1 44. Labor Code § 1194 entitles an employee receiving less than the minimum wage
2 to recover in a civil action the unpaid balance of the full amount of this minimum wage,
3 including interest thereon, reasonable attorneys' fees, and costs of suit.

4 45. Labor Code § 1194.2 entitles an employee receiving less than the minimum
5 wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid
6 and interest thereon.

7 46. Labor Code §1197.1 subjects an employer who causes an employee to be paid
8 less than minimum wage to: (1) a civil penalty equal to one hundred dollars (\$100) for each
9 underpaid employee for each pay period in which the employee is underpaid for an initial
10 violation that is intentionally committed; (2) two hundred and fifty dollars (\$250) for a
11 subsequent violation for the same specific offense for each underpaid employee for each
12 pay period regardless of whether the initial violation is intentionally committed; (3)
13 restitution of wages; and (4) liquidated damages, all payable to the employee.

14 47. During the class period, Defendants have refused and failed to pay Plaintiff and
15 the Class for all hours worked due to interrupted meal breaks. Consequently, Defendants
16 have failed to pay minimum wages to Plaintiff and the Class for all hours worked as alleged
17 above in violation of California Labor Code §§218, 558, 1194, 1194.2, 1197, 1197.1, 1198,
18 and the Wage Order.

19 48. As a result of Defendant's conduct, Plaintiff, Class Members, and Aggrieved
20 Employees have been deprived of payment for all hours worked and minimum wage for
21 all hours worked in an amount to be determined at trial, and are entitled to recovery of the
22 unpaid balance of the full amount of these wage, including interest thereon, reasonable
23 attorneys' fees, and costs of suit pursuant to Labor Code §1194, 218.5, and Cal. Code of
24 Civ. Pro. §1021.5; liquidated damages and interest thereon pursuant to Labor Code
25 §1194.2; and civil penalties, restitution of wages, and liquidated damages pursuant to Labor
26 Code §1197.1.

27 49. Plaintiff alleges on information and belief that Defendants' failure to pay the
28 Class Members for all hours worked as alleged in this cause of action, was willful, and thus

entitles the Class Members to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the time they were due, whichever period is shorter.

50. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court award civil penalties as set forth in § 558 for each pay period during which Defendants failed to pay the Class Members as alleged above.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION

Cal. Lab. Code §§201, 202 and 2698 *et seq.*

51. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

52. During the Class period, Labor Code Sections 201 and 202 applied to Defendants' employment of Plaintiff and the rest of the Waiting Time Subclass (also referred to within this cause of action collectively as "Class"). At all times relevant hereto, Labor Code Section 201 provided that, if an employer such as Defendants discharged an employee such as a member of the Class, the wages earned and unpaid at the time of discharge were due and payable immediately. Furthermore, Labor Code Sections 202 provided that, if an employee such as a member of the Class voluntarily left his or her employment, the wages earned and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to leave, in which case the employee is entitled to receive his or her wages immediately at the time of quitting.

53. Plaintiff is informed and believes and, based thereon, alleges that, during the Class period, Defendants willfully failed to pay former employees in the Class their earned and unpaid wages, either at the time of their discharge or within seventy-two (72) hours of their quitting. Furthermore, Defendants failed to pay Plaintiff, on a timely basis, all of the wages due to her at the time of termination or quitting, including overtime wages. Indeed, Plaintiff was terminated on 9/5/2018, accordingly, pursuant to Labor Code §201, her wages

1 were due immediately. However, her final paycheck is dated 9/14/2018. Defendant's
2 uniform policy and practice of waiting until the next pay period to issue final wages instead
3 of paying within the timeframes established by the Labor Code violates Labor Code
4 Section 201 and 202.

5 54. As alleged above, by failing to comply with California labor laws governing the
6 addition of nondiscretionary bonuses in the calculation of overtime pay, and rounding
7 employee punch times resulting in failure to pay for all hours worked by Plaintiffs and the
8 Waiting Time Subclass, as well as failure to pay meal and rest period penalty wages,
9 Defendants underpaid the actual amount of regular hours and overtime hours worked by
10 Plaintiffs and the rest of the Waiting Time Subclass. These unpaid amounts were still
11 owing to former employees in the Class when they ended their employment with
12 Defendants. Consequently, Defendants failed to timely pay all wages due former
13 employees in the Class at the time that their employment ended.

14 55. During the Class Period, Labor Code Section 203 provided that, if employers
15 such as Defendants willfully fail to pay any wages of an employee who is discharged or
16 who quits, the wages of the employee shall continue as a penalty from the due date thereof
17 at the same rate until paid or until an action therefore is commenced, but the wages shall
18 not continue for more than thirty (30) days. Accordingly, Class Members who were
19 discharged or who quit during the Class Period are entitled to receive their wages for each
20 day they were not paid, at their regular rate of pay, up to a maximum of thirty (30) days.

21 56. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for himself
22 and members of the proposed Subclass for each violation of Labor Code §203 during the
23 Class Period, in an amount according to proof based on Defendants' corporate and payroll
24 records.

25 **FOURTH CAUSE OF ACTION**

26 **REST PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

27 Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq*

57. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

58. Defendants did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Plaintiff, his rest breaks, and those of his coworkers, were frequently interrupted. Defendants failed to pay Plaintiff and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed and/or interrupted rest periods. Because Defendants violated Section 12(A) of Wage Order 5, Defendants are liable under Labor Code §1198. Further, as a derivative claim, Plaintiffs also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

59. Plaintiff also seeks injunctive relief requiring Defendants to comply with the California Labor Code and Wage Orders with respect to rest periods, declaratory relief that Defendants' policies regarding such are unlawful, and attorneys' fees and costs, and under Cal. Code of Civ. Pro. §1021.5.

60. Defendants' failure to pay rest period premiums was done willfully, in bad faith, in knowing violation of the California Labor Code and the IWC Wage Order.

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS AGAINST ALL DEFENDANTS

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

61. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

62. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal

1 period of not less than 30 minutes... An employer shall not employ an employee for a work
2 period of more than 10 hours per day without providing the employee with a second meal
3 period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall
4 require an employee to work during any meal... period mandated by an applicable order
5 of the Industrial Welfare Commission.”

6 63. Section 11(D) of Wage Order 5 states that, “Notwithstanding any other
7 provision of this order, employees in the health care industry who work shifts in excess of
8 eight (8) total hours in a workday may voluntarily waive their right to one of their two meal
9 periods. In order to be valid, any such waiver must be documented in a written agreement
10 that is voluntarily signed by both the employee and the employer. The employee may
11 revoke the waiver at any time by providing the employer at least one day’s written notice.
12 The employee shall be fully compensated for all working time, including any on-the-job
13 meal period, while such a waiver is in effect.”

14 64. On many occasions, Plaintiff and aggrieved employees were unable to take a
15 compliant meal period because meal periods were frequently interrupted. Defendants failed
16 to permit Plaintiffs and others to take timely, off-duty, meal breaks of “not less than 30
17 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and
18 512. Moreover, because Defendant’s policy and practice violates a Wage Order,
19 Defendants are liable under Labor Code §1198. As a derivative claim, Plaintiff alleges that
20 pay statements were inaccurate, failing to include required meal period penalties, thus
21 failing the requirements of Labor Code §226(a). As a result of these violations, Defendants
22 are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. Seq.*

23 65. Plaintiff seeks injunctive relief requiring Defendants to comply with the
24 California Labor Code and relevant Wage Orders with respect to meal periods, declaratory
25 relief that Defendants’ policies regarding such are unlawful, and attorneys’ fees and costs,
26 and under Cal. Code of Civ. Pro. §1021.5.

1 66. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
2 award civil penalties as set forth in § 558 for each pay period during which Defendants
3 failed to pay the Class Members as alleged above.

4 67. Defendants' failure to pay meal period premiums was done willfully, in bad
5 faith, in knowing violation of the California Labor Code and the IWC Wage Orders.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
8 **AGAINST ALL DEFENDANTS**

9 Cal. Labor Code §§ 226, 1174, 2699 *et seq.*

10 68. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 69. California Labor Code § 226(a) provides that, at the time of each payment of
13 wages, an employer shall provide each employee with a wage statement itemizing, among
14 other things, the total hours worked by the employee in the pay period, and all applicable
15 hourly rates in effect during the pay period, the corresponding number of hours worked at
16 each hourly rate by the employee, and the true legal name of the entity that is the employer.

17 70. California Labor Code § 226(e) provides that an employee suffering injury as a
18 result of a knowing and intentional failure by an employer to comply with Labor Code §
19 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50 for
20 the initial pay period in which a violation occurs and \$100 per employee for each violation
21 in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and
22 costs.

23 71. Defendants knowingly and intentionally failed to provide timely, accurate,
24 itemized wage statements to Plaintiff, Class Members, and Aggrieved Employees in
25 accordance with Labor Code §§ 226 and 1174.

26 72. Derivative of the claims alleged above, the statements provided to Plaintiff,
27 Class Members, and Aggrieved Employees have not accurately reflected actual gross
28 wages earned, including overtime and meal/rest premiums and, total hour worked

1 requirements. Such failures caused injury to Plaintiff and others, by, among other things,
2 impeding them from knowing the total hours worked and the amount of wages to which
3 they are and were entitled. Defendants' violations of Labor Code section 226 are ongoing
4 and will continue until and unless this Court enters an injunction barring such violations.

5 73. Plaintiff, Class Members, and Aggrieved Employees are therefore entitled to the
6 damages and penalties, plus attorneys' fees and costs, provided for under Labor Code §§
7 226(e) and (g). Pursuant to Labor Code § 226(g), Plaintiff, Class Members, and Aggrieved
8 Employees are also entitled to and seek injunctive relief requiring Defendants to comply
9 with Labor Code 226(a).

10 74. Labor Code § 1174 provides that "[e]very employer employing labor in this state
11 shall ... (c) [k]eep a record showing the names and addresses of all employees employed
12 and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants
13 or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and
15 any applicable piece rate paid to, employees employed at the respective plants or
16 establishments. These records shall be kept in accordance with rules established for this
17 purpose by the commission, but in any case shall be kept on file for not less than two years."

18 75. Labor Code § 1174.5 provides that "[a]ny person employing labor who willfully
19 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
20 complete records maintained by subdivision (d) of Section 1174, or to allow any member
21 of the commission or employees of the division to inspect records pursuant to subdivision
22 (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500)."

23 76. Plaintiff alleges on information and belief that Defendants knowingly and
24 intentionally failed to furnish the Class Members with accurate itemized statements for
25 each pay period that they worked and failed to maintain accurate payroll records of the
26 Class Members as mandated by Labor Code §§ 226 and 1174. As such, the Class Members
27 are entitled to civil penalties and an award of costs and attorney's fees under § 226(e). In
28 addition, the Class Members are entitled to recover civil penalties under § 1174.5.

UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT (“UCL”)
AGAINST ALL DEFENDANTS

78. Defendants knowingly committed, and upon information and belief continue to commit, ongoing unlawful business practices within the meaning of the UCL, including, but not limited to unlawful practices as described in the causes of action articulated above, and hereby incorporated herein.

80. Pursuant to the UCL, Plaintiff, all Class Members, and Aggrieved Employees are entitled to restitution of money or property acquired by Defendants by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

82. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiff, Class Members, Aggrieved Employees and of the general public.

84. Defendants' numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, et seq.

1 85. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff, Class
2 Members and Aggrieved Employees are entitled to restitution of unpaid wages and penalty
3 pay, among other relief alleged herein, that were withheld and retained by Defendants
4 during a period that commences four years prior to the filing of this action. Plaintiffs are
5 further entitled to a permanent injunction requiring Defendants to comply with all
6 provisions of California labor law, including properly paying the lawful rate of pay for all
7 hours worked, providing meal/rest periods to all workers as defined herein, timely pay
8 wages upon discharge, maintain accurate wages statements and payroll records, in addition
9 to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and
10 other applicable law, and costs.

11 **EIGHTH CAUSE OF ACTION**

12 STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS
13 GENERAL ACT, LABOR CODE §2698 et seq. AGAINST ALL DEFENDANTS

14 86. Plaintiff incorporates by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 87. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5,
17 an aggrieved employee, on behalf of herself and other current or former employees, may
18 recover penalties under any provision of the Labor Code that provides for civil penalties.
19 These penalties are in addition to any other relief available under the Labor Code.
20 Plaintiff is an aggrieved employee under PAGA.

21 88. As set forth above, Defendants have committed numerous violations for which
22 the Labor Code provides for penalties, including violations of all applicable Labor Code
23 provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the
24 aforementioned Labor Code provisions as statutes to which §2699.3's procedural
25 requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has
26 complied with the procedural requirements specified in §2699.3 by providing written
27 notice to the Defendants and the Labor & Workforce Development Agency ("LWDA").
28 See Exhibit 1 attached hereto, which is a true and correct copy of the Notice

1 correspondence showing compliance with §2699.3. No notice of intent to investigate the
2 alleged violations was provided within the statutory period. Consequently, Plaintiff has
3 exhausted administrative remedies, and on behalf of themselves and all other aggrieved
4 current and former employees of Defendants. Plaintiff, therefore, now pursues this cause
5 of action as permitted by §2698, *et seq.*

6 89. Enforcement of statutory provisions enacted to protect workers and to ensure
7 proper and prompt payment of wages due to employees is a fundamental public interest
8 in California. Consequently, Plaintiff's success in this action will result in the
9 enforcement of important rights affecting the public interest and will confer a significant
10 benefit upon the general public. Private enforcement of the rights enumerated herein is
11 necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial
12 burden in pursuing this action and it would be against the interests of justice to require
13 payment of attorneys' fees and costs from any recover that might be obtained herein,
14 pursuant to, *inter alia*, Labor Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

15 90. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
16 interest, then attorneys' fees may be awarded to Plaintiff and against Defendants under
17 Code of Civil Procedure §1021.5 and other applicable law in part, because:

18 91. A successful outcome in this action will result in the enforcement of important
19 rights affecting the public interest by requiring Defendants to comply with the wage and
20 hour laws and California's unfair business practice law;

21 92. This action will result in a significant benefit to Plaintiff, the Class, and the
22 general public by bringing to a halt unlawful and/or unfair activity;

23 93. Unless this action is prosecuted, members of the Class and general public will
24 not recover those moneys, and many of Defendants' employees would not be aware that
25 the acts and practices they were subjected to by Defendants were wrongful;

26 94. Unless this action is prosecuted, Defendants will continue to mislead their
27 employees about the true nature of their rights and remedies under the wage and hour
28 laws; and

1 95. An award of attorneys' fees and costs is necessary for the prosecution of this
2 action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to
3 consumers in general, by preventing Defendants from continuing to circumvent the wage
4 and hour statutes and frustrate the long-standing recognition by the California legislature
5 and the courts that such statutes, as pled herein, are not merely a matter of private
6 concern between employer and employee to be eviscerated by considerations of waiver,
7 contributory negligence, good or bad faith, and private agreements. Rather, the wage and
8 hour statutes have been described as a matter of public concern, were designed to provide
9 minimum substantive guarantees to individual workers and are essential to public
10 welfare.

11
12 **REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request
14 judgment and the following specific relief against Defendants as follows:

- 15 A. That the Court determine that this action may be maintained as a class
16 action under Code of Civil Procedure § 382;
- 17 B. That the Court determine that this action may be maintained as a PAGA
18 representative action under Cal. Labor Code. §2698 et seq;
- 19 C. Provision of class notice to all members of the Class;
- 20 D. That Defendants are found to have violated the above-referenced
21 provisions of the Labor Code, CCR and IWC Wage Order 5-2001 as to
22 Plaintiff, Class Members and relevant subclass Members;
- 23 E. For compensatory damages, in an amount according to proof at trial, with
24 interest thereon;
- 25 F. For compensation for not being provided paid rest breaks;
- 26 G. For compensation for not being provided meal periods;
- 27 H. That Defendant's actions are found to be willful and/or in bad faith to the
28 extent necessary under §§ 201, 202, 203, 204 and 558 of the California

1 Labor Code for willful failure to pay all compensation owed at the time
2 of separation to Plaintiff, Class Members, and Aggrieved Employees no
3 longer employed by Defendants;

4 I. That Plaintiff, Class Members, and Aggrieved Employees receive
5 penalties for Defendant's violation of §226 and 1174 of the California
6 Labor Code for willful failure to provide and maintain the required
7 accurate and itemized wage statements;

8 J. That Plaintiff, Class Members, and Aggrieved Employees receive an
9 award in the amount of unpaid wages owed, including interest thereon,
10 and penalties as provided in the Labor Code, CCR and Wage Order,
11 including under Labor Code §§ 203, 510, and 558, subject to proof at
12 trial;

13 K. That Plaintiff, Class Members, and Aggrieved Employees receive
14 damages pursuant to §§248.5 in addition to reasonable attorneys' fees,
15 and costs of suit pursuant to Labor Code § 218.5 and CCP 1021.5;

16 L. That Defendants be ordered to pay restitution to Plaintiff, Class Members,
17 and Aggrieved Employees for amounts acquired through Defendants'
18 unlawful activities pursuant to Business and Professions Code §§ 17200-
19 05 and enjoined to cease and desist from unlawful and unfair activities in
20 violation of California Business and Professions Code § 17200 et. seq.;

21 M. That Plaintiff, Class Members, and Aggrieved Employees receive an
22 award of reasonable attorneys' fees and costs pursuant to Code of Civil
23 Procedure §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable
24 laws;

25 N. That the Court award penalties pursuant to Labor Code §2698 et seq;

26 O. That the Court issue declaratory relief that Defendant's challenged
27 policies are unlawful; and
28

1 P. That the Court order further relief, in law and equity, as it deems
2 appropriate and just.
3

4 DATED: January 5, 2021

KOUL LAW FIRM

LAW OFFICES OF SAHAG MAJARIAN II

6
7 
8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiff ISAC
MARTINEZ and putative class members

10
11
12 ***DEMAND FOR JURY TRIAL***
13

14 Plaintiff, on behalf of himself and the putative class, hereby demands trial by jury
15 to the full extent permitted by law.

16
17 DATED: January 5, 2021

KOUL LAW FIRM

LAW OFFICES OF SAHAG MAJARIAN II

18
19 
20 BY: Nazo Koulloukian, Esq.
21 Attorneys for Plaintiff ISAC
22 MARTINEZ and putative class members
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 19, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Patrick J. Treacy
3482 Loma Vista Rd.
Ventura, CA 93003-3026

Patrick J. Treacy dba Treacy House
3482 Loma Vista Rd.
Ventura, CA 93003-3026

Patrick Treacy
Treacy Villa
3482 Loma Vista Rd.
Ventura, CA 93003-3026

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Isac Martinez
Employer: Patrick Treacy, Treacy Villa, Treacy House

Dear Sir or Madam:

Isac Martinez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Patrick Treacy, Treacy Villa, and Treacy House. (hereafter “Employer.”)

Employer is a 24-hour skilled nursing and rehabilitation facility. The claimant’s proposed PAGA representative action would represent dozens of current and former employees. Claimant worked for Employer as a medical technician from September of 2019 to May of 2020, earning only \$14.00 per hour upon separation.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked due to Interrupted Meal Periods

(Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

When employees like Claimant and aggrieved employees earning at or near minimum wage do not receive payment for all hours worked because their unpaid meal breaks are interrupted, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and aggrieved employees to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant’s unpaid meal periods were frequently interrupted with work.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practice of requiring employees to work during mandated meal and rest periods. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed
(Cal. Lab. Code §§201, 202 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay Claimant and aggrieved employees all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant as a result of its unlawful meal period practices at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other aggrieved employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203. Claimant will seek restitution pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Claimant, his rest breaks, and those of his coworkers, were frequently interrupted.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed and/or interrupted rest periods. Because Employer violated Section 12(A) of Wage Order 5, Employer is liable under Labor Code §1198. Further, as a derivative claim, claimants also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 et seq.

During Claimants' employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Section 11(D) of Wage Order 5 states:

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be

documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

On many occasions, Claimant and aggrieved employees were unable to take a compliant meal period because meal periods were frequently interrupted.

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer's policy and practice violates a Wage Order, Employer is liable under Labor Code §1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Comply with Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and aggrieved employees in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, and total hour worked.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing who to contact in the event they had questions or concerns regarding wage statements, who was responsible for the preparation of accurate wage statements, who to assert allegations against in the event of noncompliance with legal requirements, and the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to clearly state the name of the entity that is the legal employer, itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant

cc:

Sahag Majarian, Esq.

Law Offices of Sahag Majarian II

18250 Ventura Blvd.

Tarzana, CA 91356