

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: G&C SWAN, INC., a California corporation;
(AVISO AL DEMANDADO): and DOES 1-50, inclusive

YOU ARE BEING SUED BY PLAINTIFF: NICOLE SHAVER, on behalf of herself,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): and all others similarly situated,
and the general public, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Bernardino
247 West Third Street
San Bernardino, California 92415-0210

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

The Spivak Law Firm
16530 Ventura Blvd., Ste. 203, Encino, CA 91436

818-582-3086

DATE:

(Fecha)

Clerk, by

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, Esq./Maralle Messrelian, Esq. SBN: 179684/316974 The Spivak Law Firm 16530 Ventura Blvd., Ste. 203, Encino, CA 91436 TELEPHONE NO.: 818-582-3086 FAX NO.: 818-582-2561 ATTORNEY FOR (Name): Nicole Shaver	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, 92415-0210 BRANCH NAME: San Bernardino District - Civil Division	
CASE NAME: NICOLE SHAVER v. G&C SWAN, INC.	

CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:
--	--	---

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. ☐ Large number of separately represented parties
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Eight (8)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 02 / 17 / 2021

David Spivak, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

NICOLE SHAVER, et al.

Case No.: _____

vs.

CERTIFICATE OF ASSIGNMENT

G&C SWAN, INC., et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the CENTRAL District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☐ General

☐ Collection

Nature of Action

Ground

- | | |
|--|--|
| ☐ 1. Adoption | Petitioner resides within the district |
| ☐ 2. Conservator | Petitioner or conservatee resides within the district. |
| ☐ 3. Contract | Performance in the district is expressly provided for. |
| ☐ 4. Equity | The cause of action arose within the district. |
| ☐ 5. Eminent Domain | The property is located within the district. |
| ☐ 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| ☐ 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 9. Mandate | The defendant functions wholly within the district. |
| ☐ 10. Name Change | The petitioner resides within the district. |
| ☐ 11. Personal Injury | The injury occurred within the district. |
| ☐ 12. Personal Property | The property is located within the district. |
| ☐ 13. Probate | Decedent resided or resides within or had property within the district. |
| ☐ 14. Prohibition | The defendant functions wholly within the district. |
| ☐ 15. Review | The defendant functions wholly within the district. |
| ☐ 16. Title to Real Property | The property is located within the district. |
| ☐ 17. Transferred Action | The lower court is located within the district. |
| ☐ 18. Unlawful Detainer | The property is located within the district. |
| ☐ 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| ☐ 20. Other <u>Employment</u> | <u>Defendants are found, maintain offices and transact business within district.</u> |
| ☐ 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

G&C SWAN, INC.

1354 Carlos Place

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

Ontario

CA

91764

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on February 17, 2021 at Encino, California.



Signature of Attorney/Party

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
3 THE SPIVAK LAW FIRM
16530 Ventura Blvd., Ste 203
4 Encino, CA 91436
5 Telephone: (818) 582-3086
Facsimile: (818) 582-2561
6

7 Attorneys for Plaintiff,
NICOLE SHAVER, and all others similarly situated
8 (Additional Attorney listed on next page)
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12 **(UNLIMITED JURISDICTION)**

13 NICOLE SHAVER, on behalf of herself, and all
14 others similarly situated, and the general public,
and as an “aggrieved employee” on behalf of
15 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,
16

17 *Plaintiff(s),*

18 vs.
19

20 G&C SWAN, INC., a California corporation;
and DOES 1-50, inclusive,
21

22 *Defendant(s).*
23
24
25
26
27
28

Case No.:

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff NICOLE SHAVER (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants G&C SWAN, INC.,
and DOES 1 through 50, inclusive (collectively “Defendants”).

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
8 and other similarly situated current and former employees in California for unpaid wages and
9 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal
10 and rest periods in compliance with California law, (2) pay all wages earned for all hours worked,
11 (3) indemnify Plaintiff and the below-described class for reasonable expenses incurred during the
12 course of performing their duties, (4) provide accurate written wage statements, (5) timely pay all
13 final wages, and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages
14 and related relief through this class and representative action.

15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
and the class, inclusive of all relief, place more than \$25,000 in controversy.

17 4. There is no basis for federal question subject matter jurisdiction in this case.
18 Specifically, Plaintiff asserts claims on behalf of herself and the class that solely arise under
19 California law rather than federal law.

20 5. There is no basis for federal diversity jurisdiction in this case.

21 6. Venue is proper in San Bernardino County pursuant to California Code of Civil
22 Procedure § 395(a) and § 395.5 because at least some of the transactions that are the subject
23 matter of this Complaint occurred therein and/or because each defendant is found, maintains
24 offices, transacts business, and/or has an agent therein.

25 **PARTIES**

26 7. Plaintiff is a resident of California. At all relevant times, Plaintiff was an
27 “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an
“aggrieved employee” within the meaning of Labor Code Section 2699(c).

28 8. Defendant G&C SWAN, INC. is a corporation organized under the laws of



California and also a citizen of California based on Plaintiff's information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

11. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable California labor laws as alleged herein.

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The class is defined as follows: All persons Defendants employed in California as unpaid interns and hourly employees, including but not limited to support staff, counselors, case managers, and persons in other similar positions ("Class Members" or collectively "the Class"), at any time during the period beginning four years prior to the filing



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

of this action and ending on the date that final judgment is entered in this action.

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

B. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;

C. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

D. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate wage statements;

E. Whether Defendants willfully failed to provide the Class Members with timely final wages;

F. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class Members; and

G. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

22. Defendants first employed Plaintiff on or about May 21, 2020 to work as an unpaid intern at their New Creation/His House addiction treatment center located at 2511 McCarty Dr., in Colton, California. Defendants failed to compensate Plaintiff and the other Class Members that they classified as unpaid interns for their hours worked. Defendants also failed to provide Plaintiff and the other unpaid intern Class Members with all meal periods and rest breaks required by California law.

23. On or about June 3, 2020, Defendants began to employ Plaintiff as support staff at their New Creation/His House treatment center. Plaintiff also occasionally worked at Defendants' treatment centers located at 3950 Prado Lane and 11646 Encanto Lane in Colton, California. Plaintiff worked alone at the treatment centers with no potential for relief from duty by other employees. Plaintiff worked for Defendants continuously from the time of her hire until approximately September 7, 2020 when her employment ended.

24. At all relevant times, Defendants paid Plaintiff and the other Class Members at an



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 hourly rate of pay on a bi-weekly basis. At all relevant times, Defendants classified Plaintiff and
2 the other Class Members as non-exempt employees entitled to the protections of both the Labor
3 Code and the Wage Order.

4 25. At all relevant times, Plaintiff and the Class Members have worked over eight (8)
5 hours in one workday and/or over forty (40) hours in one work week. Defendants scheduled
6 Plaintiff to work alone at their treatment center on McCarty Drive Monday – Friday from 4:00
7 p.m.-midnight and Saturdays from 8:00 a.m.-4:00 p.m. Despite this, Defendants failed to provide
8 Plaintiff and the Class Members with all timely rest and meal periods pursuant to California law.
9 Defendants failed to hire sufficient staff members to relieve Plaintiff and the Class Members so
10 they could take duty-free rest periods and duty-free meal periods, including but not limited to,
11 two 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they
12 worked more than ten hours. Defendants did not enter into valid on-duty meal period agreements
13 with Plaintiff or any of the Class Members, nor did the nature of their work require on duty meal
14 periods or rest breaks. Plaintiff complained to supervisor Glenn Doty about Defendants’ failure
15 to provide her and the Class Members with timely, duty-free, rest and meal periods. In spite of
16 this, Defendants refused to make changes. Finally, Defendants required Plaintiff and the Class
17 Members to remain on the premises at all times. Defendants did not request an exemption from
18 California’s rest period law from the Division of Labor Standards Enforcement.

19 26. At all relevant times, Plaintiff and other Class Members were unable to take their
20 meal periods before the end of their 5th hour of work. Additionally, Defendants failed to pay
21 premium wages for days on which they failed to provide Plaintiff and the Class Members with all
22 timely, uninterrupted, and unrestricted meal and rest periods. In fact, Defendants’ supervisors,
23 including Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn, modified
24 Plaintiff’s and the other Class Members’ time records and deleted the premium wages that were
25 automatically generated by the timekeeping application for their missed meal periods.

26 27. At all relevant times, Defendants required Plaintiff and other Class Members to
27 work at the other treatment centers, prior to the start of their shift, to sign documents and pick up
28 items. Defendants’ management, including supervisors Glenn Doty and Patricia Owens, and
Program Manager Andrew Wildasinn, would regularly contact Plaintiff and the other Class
Members on their personal cell phones to instruct them to run such errands, and/or to discuss
scheduling. However, Defendants failed to properly pay Plaintiff and the other Class Members



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

for this off-the-clock work.

28. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and other Class Members to use their personal cell phones in the course of performing their duties. Defendants' supervisors, including Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn communicated with Plaintiff and the other Class Members by phone regarding work instructions, scheduling, or to resolve work related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, Defendants did not reimburse Plaintiff and the Class Members for their cell phone expenses. Defendants also required Plaintiff and the Class Members to use their personal vehicles to travel to and from the other treatment centers and pick up necessary documents and supplies. Defendants did not reimburse Plaintiff and the Class Members for such mileage expenses.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class Members against all Defendants)

29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

30. At all relevant times during the applicable limitations period, Plaintiff and the Class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

31. Labor Code § 1198 states,

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

32. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

33. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

34. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

35. Pursuant to the Wage Order, Plaintiff and the Class were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

36. At all relevant times, Plaintiff and the Class Members have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Defendants scheduled Plaintiff to work alone at the New Creation/His House treatment center Monday – Friday from 4:00 p.m.-midnight and Saturdays from 8:00 a.m.-4:00 p.m. Despite this, Defendants failed to provide Plaintiff and the Class Members with all timely rest periods pursuant to California law. Defendants failed to hire sufficient staff members to relieve Plaintiff and the Class Members so they could take duty-free rest periods, including but not limited to three ten-minute rest periods on workdays they worked more than ten hours. Plaintiff complained to supervisor Glenn Doty



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 about Defendants' failure to provide her and the Class Members with timely, duty-free, rest
2 periods. In spite of this, Defendants refused to make changes. Finally, Defendants required
3 Plaintiff and the Class Members to remain on the premises at all times. Defendants did not
4 request an exemption from California's rest period law from the Division of Labor Standards
5 Enforcement.

6 37. Defendants failed to pay Plaintiff the additional wages required by California
7 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes
8 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
9 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
10 providing the Class with additional wages for all rest breaks not provided to them as required
11 by California Labor Code § 226.7.

12 38. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
13 damages in amounts subject to proof to the extent they were not paid additional wages owed for
14 all rest breaks not provided to them.

15 39. By reason of the above, Plaintiff and the members of the Class are entitled to
16 premium wages for workdays in which one or more rest breaks were not provided to them
17 pursuant to California Labor Code § 226.7.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Lab. Code §§ 226.7, 512, and 1198)**

21 **(By Plaintiff and the Class Members against all Defendants)**

22 40. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 41. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and protections
25 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

26 42. Labor Code § 1198 states,

27 "The maximum hours of work and the standard conditions of labor fixed
28 by the commission shall be the maximum hours of work and the standard
conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful."

43. In relevant part, Labor Code Section 512 states:



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

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

11 44. In relevant part, Section 11 of the Wage Order states:

12 Meal Periods:

13 (A) No employer shall employ any person for a work period of
14 more than five (5) hours without a meal period of not less than 30
15 minutes, except that when a work period of not more than six (6)
16 hours will complete the day’s work the meal period may be waived
17 by mutual consent of the employer and the employee. Unless the
18 employee is relieved of all duty during a 30 minute meal period, the
19 meal period shall be considered an “on duty” meal period and
20 counted as time worked. An “on duty” meal period shall be permitted
21 only when the nature of the work prevents an employee from being
22 relieved of all duty and when by written agreement between the
23 parties an on-the job paid meal period is agreed to. The written
24 agreement shall state that the employee may, in writing, revoke the
25 agreement at any time.

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

...

(D) 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.

45. 9 C.F.R. § 785.7 states:



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

46. 29 C.F.R. § 785.18 states:

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

47. 29 C.F.R. § 785.19 states:

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

citizen requests, and remain accessible).

48. Wage Order 5, § 11(D) 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.

49. In addition, Labor Code Section 226.7 states

(d) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(e) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

50. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours and before they worked more than five hours in a workday.

51. At all relevant times, Plaintiff and the Class Members have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Defendants scheduled Plaintiff to work alone at the New Creation/His House treatment center Monday – Friday from 4:00 p.m.-midnight and Saturdays from 8:00 a.m.-4:00 p.m. Despite this, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods pursuant to California law. Defendants failed to hire sufficient staff members to relieve Plaintiff and the Class Members so they could take duty-free meal periods, including but not limited to, two 30-minute



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 uninterrupted meal periods on workdays they worked more than ten hours. Defendants did not
2 enter into valid on-duty meal period agreements with Plaintiff or any of the Class Members, nor
3 did the nature of their work require on duty meal periods. Plaintiff complained to supervisor
4 Glenn Doty about Defendants' failure to provide her and the Class Members with timely, duty-
5 free meal periods. In spite of this, Defendants refused to make changes. Finally, Defendants
6 required Plaintiff and the Class Members to remain on the premises at all times.

6 52. At all relevant times, Plaintiff and other Class Members were unable to take their
7 meal periods before the end of their 5th hour of work. Defendants' supervisors, including Glenn
8 Doty and Patricia Owens, and Program Manager Andrew Wildasinn, modified Plaintiff's and
9 the other Class Members' time records and deleted the premium wages that were automatically
10 generated by the timekeeping application for their missed meal periods.

11 53. Defendants failed to pay Plaintiff the additional wages required by California
12 Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes
13 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
14 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
15 providing the Class with additional wages for all meal periods not provided to them as required
16 by California Labor Code § 226.7.

16 54. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
17 damages in amounts subject to proof to the extent they were not paid additional wages owed for
18 all meal periods not provided to them.

19 55. By reason of the above, Plaintiff and the members of the Class are entitled to
20 premium wages for workdays in which one or more meal periods were not provided to them
21 pursuant to California Labor Code § 226.7.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**

24 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

25 **(By Plaintiff and the Class Members against all Defendants)**

26 56. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

27 57. At all relevant times, Plaintiff and the Class Members have been employees of
28 Defendants and entitled to the benefits and protections of the California Labor Code sections 510,
1194, 1197, and 1198 and the Wage Order.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 58. Section 3 of the applicable Wage Order states:

2 (A) Daily Overtime - General Provisions

3 (1) The following overtime provisions are applicable to employees 18
4 years of age or over and to employees 16 or 17 years of age who are not
5 required by law to attend school and are not otherwise prohibited by law
6 from engaging in the subject work. Such employees shall not be employed
7 more than eight (8) hours in any workday or more than 40 hours in any
8 workweek unless the employee receives one and one-half (1 1/2) times
9 such employee's regular rate of pay for all hours worked over 40 hours in
10 the workweek. Eight (8) hours of labor constitutes a day's work.
11 Employment beyond eight (8) hours in any workday or more than six (6)
12 days in any workweek is permissible provided the employee is
13 compensated for such overtime at not less than:

14 (a) One and one-half (1 1/2) times the employee's regular rate of pay
15 for all hours worked in excess of eight (8) hours up to and including 12
16 hours in any workday, and for the first eight (8) hours worked on the
17 seventh (7th) consecutive day of work in a workweek; and

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

22 59. Labor Code section 510 states:

23 Eight hours of labor constitutes a day's work. Any work in excess of eight
24 hours in one workday and any work in excess of 40 hours in any one
25 workweek and the first eight hours worked on the seventh day of work in
26 any one workweek shall be compensated at the rate of no less than one and
27 one-half times the regular rate of pay for an employee. Any work in excess
28 of 12 hours in one day shall be compensated at the rate of no less than twice
the regular rate of pay for an employee. In addition, any work in excess of
eight hours on any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an employee. Nothing
in this section requires an employer to combine more than one rate of
overtime compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

60. Within the health care industry, the term "hours worked" means the time during
which an 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 ("FLSA").
Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is
defined by federal regulations:



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 ...As a general rule the term “hours worked” will include: (a) All time
2 during which an employee is required to be on duty or to be on the
3 employer’s premises or at a prescribed workplace and (b) all time during
4 which an employee is suffered or permitted to work whether or not he is
5 required to do so. Thus, working time is not limited to the hours spent in
6 active productive labor, but includes time given by the employee to the
7 employer even though part of the time may be spent in idleness. Some of
8 the hours spent by employees, under certain circumstances... in meal
9 periods and rest periods are regarded as working time and some are not.
10 The governing principles are discussed in part 785 of this chapter
11 (interpretative bulletin on “hours worked”) and part 790 of this chapter
12 (statement of effect of Portal-to-Portal Act of 1947). ...

13 61. 29 C.F.R. § 778.223 states:

14 The United States Supreme Court originally stated that employees subject
15 to the act must be paid for all time spent in “physical or mental exertion
16 (whether burdensome or not) controlled or required by the employer and
17 pursued necessarily and primarily for the benefit of the employer and his
18 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
19 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need
20 be no exertion at all and that all hours are hours worked which the
21 employee is required to give his employer, that “an employer, if he
22 chooses, may hire a man to do nothing, or to do nothing but wait for
23 something to happen. Refraining from other activity often is a factor of
24 instant readiness to serve, and idleness plays a part in all employments in
25 a stand-by capacity. Readiness to serve may be hired, quite as much as
26 service itself, and time spent lying in wait for threats to the safety of the
27 employer’s property may be treated by the parties as a benefit to the
28 employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*
Swift (1944) 323 U.S. 134. The workweek ordinarily includes “all the time
during which an employee is necessarily required to be on the employer’s
premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens*
Pottery Co. (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
the rule except to provide an exception for preliminary and postliminary
activities. See Section 785.34.

29 62. Labor Code section 1197 makes it unlawful for an employer to pay an employee
30 less than the minimum wage required under the applicable Wage Order for all hours worked
31 during a payroll period.

32 63. California Labor Code § 1194 invalidates any agreement between an employer
33 and an employee to work for less than the minimum or overtime wage required under the



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 applicable Wage Order.

2 64. Labor Code section 1198 makes it unlawful for an employer to employ an
3 employee under conditions that violate the Wage Order.

4 65. Employers must compensate non-exempt employees for “off-the-clock” work
5 (before punching in or after punching out on a time clock) if the employers knew or should have
6 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
7 Cal.4th 575, 585.

8 66. Plaintiff is informed and believes that, at all relevant times, Defendants have
9 applied centrally devised policies and practices to her and the Class Members with respect to
10 working conditions and compensation arrangements.

11 67. Defendants compensated Plaintiff and the Class Members with an hourly rate of
12 pay on a bi-weekly basis.

13 68. Defendants failed to compensate Plaintiff and Class Members for all hours worked
14 at the correct rates of pay, including overtime wages. At all relevant times, Defendants required
15 Plaintiff and Class Members to work off-the-clock without compensation. Defendants required
16 Plaintiff and the other Class Members to work at the other treatment centers, prior to the start of
17 their shift, to sign documents and pick up items. Defendants’ management, including supervisors
18 Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn, would regularly
19 contact Plaintiff and the other Class Members on their personal cell phones to instruct them to
20 run such errands, and/or to discuss scheduling. However, Defendants failed to properly pay
21 Plaintiff and the Class Members for this off-the-clock work.

22 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
23 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’
24 failure to compensate the Class Members for all hours worked as required by California law,
25 including, but not limited to overtime wages for all overtime hours they worked.

26 70. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class
27 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
28 the full amount of wages earned during each pay period during the applicable limitations period.

71. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 subject to proof.

2 72. Additionally, with respect to this cause of action, on behalf of herself and the Class
3 Members, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest
4 thereon, as permitted by law, all in amounts subject to proof.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **(Lab. Code §§ 1198 & 2802)**

8 **(By Plaintiff and the Class against all Defendants)**

9 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 74. At all relevant times, Plaintiff and the Class Members have been non-exempt
11 employees of Defendants and entitled to the benefits and protections of the California Labor Code
12 §§ 1198 and 2802 and the Wage Order.

13 75. In pertinent part, California Labor Code § 2802(a) states:

14 "An employer shall indemnify his or her employee[s] for all
15 necessary expenditures incurred by the employee in direct
16 consequence of the discharge of his or her duties."

17 76. Section 9(B) of the Wage Order states:

18 When tools or equipment are required by the employer or are
19 necessary to the performance of a job, such tools and equipment
20 shall be provided and maintained by the employer, except that an
21 employee whose wages are at least two (2) times the minimum
22 wage provided herein may be required to provide and maintain
23 hand tools and equipment customarily required by the trade or
24 craft.

25 77. California Labor Code § 1198 prohibits employers from employing their
26 employees under conditions prohibited by the Wage Order.

27 78. At all relevant times, Defendants required Plaintiff and other Class Members to
28 use their personal cell phones in the course of performing their duties. Defendants' supervisors,
including Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn
communicated with Plaintiff and the other Class Members by phone regarding work instructions,
scheduling, or to resolve work related issues and did not provide mobile phones or an alternative
to them for this purpose. Additionally, Defendants did not reimburse Plaintiff and the Class



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

Members for their cell phone expenses. Defendants also required Plaintiff and the Class Members to use their personal vehicles to travel to and from the other treatment centers and pick up necessary documents and supplies. Defendants did not reimburse Plaintiff and the Class Members for such mileage expenses.

79. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

80. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

81. Accordingly, with respect to this cause of action, on behalf of herself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class Members against all Defendants)

82. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

83. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

84. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

85. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
3 is entitled to an award of costs and reasonable attorney's fees.

4 86. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
6 injury if the employer fails to provide accurate and complete information as required by California
7 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
8 statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code § 226(a);

12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
16 and address of the legal entity that secured the services of the employer during the pay period;
17 and

18 D. The name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number.

20 87. "Promptly and easily determine," as stated in California Labor Code § 226(e),
21 means a reasonable person would be able to readily ascertain the information without reference
22 to other documents or information.

23 88. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
24 all wages owed, including but not limited to, premium, minimum and overtime wages. As a result,
25 Defendants have failed to properly and accurately itemize each employee's gross wages earned,
26 net wages earned, the total hours worked, the corresponding number of hours worked by
27 employees and other requirements of California Labor Code § 226. As a result, Defendants have
28 violated California Labor Code § 226.

89. Defendants' failure to provide Plaintiff and the Class Members with accurate wage
statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
Class Members with accurate wage statements but intentionally provided wage statements that



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

Defendants knew were not accurate.

90. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

91. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class Member against all Defendants)

92. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

93. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code sections 201-203, and the Wage Order.

94. Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

95. Labor Code section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 96. By failing to pay all earned regular, overtime, and premium wages to Plaintiff
2 and the Class as described above, Defendants failed to timely pay them all earned and unpaid
3 wages in violation of Labor Code section 201 or 202.

4 97. Labor Code section 203 provides that the wages of an employee continue on a
5 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
6 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

7 98. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
8 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
9 Defendants have deliberately maintained policies and practices that violate the requirements of
10 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability
11 to comply with those legal requirements.

12 99. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
13 behalf of herself and the Class, in amounts subject to proof not to exceed 30 days of waiting
14 time penalties for each Class Member.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

18 **(By Plaintiff and the Class Members against all Defendants)**

19 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 101. At all relevant times during the applicable limitations period, Plaintiff and the
21 Class Members have been employees of Defendants and entitled to the benefits and protections
22 of the Business and Professions Code §§ 17200, *et seq.*

23 102. The unlawful conduct of Defendants alleged herein amount to and constitutes
24 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
25 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
26 gained a competitive advantage over other comparable companies doing business in California
27 that comply with their legal obligations to compensate employees for all earned wages.

28 103. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
Class Members have suffered injuries in fact and lost money or property. Defendants deprived
Plaintiff and the other Class Members of minimum, overtime, and premium wages and
reimbursement for expenses that Plaintiff and the other Class Members incurred during the course



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 of performing their duties.

2 104. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
3 Class Members are entitled to restitution of all monies rightfully belonging to them that
4 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
5 practices.

6 105. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
7 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
8 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

9 **EIGHTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(By Plaintiff and the Class Members against All Defendants)**

12 106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 107. The "Aggrieved Employees" are all members of the Class defined above who
14 Defendants employed during the period beginning December 11, 2019 and ending on the date
15 that final judgment is entered in this action.

16 108. Labor Code § 204 states

17 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
18 or 204.2, earned by any person in any employment are due and payable twice
19 during each calendar month, on days designated in advance by the employer as the
20 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
21 calendar month shall be paid for between the 16th and the 26th day of the month
22 during which the labor was performed, and labor performed between the 16th and
23 the last day, inclusive, of any calendar month, shall be paid for between the 1st
24 and 10th day of the following month. ...

25 (b) (1) Notwithstanding any other provision of this section, all wages
26 earned for labor in excess of the normal work period shall be paid no later than the
27 payday for the next regular payroll period.

28 (2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements shall



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 apply to the covered employees.

2 (d) The requirements of this section shall be deemed satisfied by the payment
3 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
4 more than seven calendar days following the close of the payroll period.

5 109. Defendants paid wages to employees on regular intervals. Defendants failed to pay
6 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
7 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
8 all wages earned and all hours worked.

9 110. During the applicable time period, Defendants violated California Labor Code §§
10 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

11 111. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
12 behalf of him or herself and other current or former employees, to bring a civil action to recover
13 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

14 112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
15 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
16 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
17 applicable limitations period in the following amounts:

18 A. For violations of California Labor Code § 204, one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
20 (\$200.00) for each Aggrieved Employee plus twenty-five percent (25%) of the amount unlawfully
21 withheld from each Aggrieved Employee for each subsequent, willful or intentional violation
22 (penalty amounts established by California Labor Code § 210).

23 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
24 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
25 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
26 California Labor Code § 226.3).

27 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
28 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount
sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
558).



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
3 California Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
6 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
7 (regardless of whether the initial violations were intentionally committed), in addition to an
8 amount sufficient to recover unpaid wages (penalty amounts established by California Labor
Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
11 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

13 113. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated December 11, 2020, Plaintiff filed written notice online
15 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
16 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
17 have been violated, including the facts and theories to support the alleged violations. Plaintiff
18 accompanied her LWDA notice with a fee in the amount of \$75.00. A true and correct copy of
19 Plaintiff’s letter to the LWDA dated December 11, 2020 is attached hereto as Exhibit A. The
20 LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s
21 notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing
22 her that it does not intend to investigate these allegations.

23 114. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26 **PRAYER FOR RELIEF**

27 115. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
28 relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff's claims for violations of California law;

- 2 B. An order that Plaintiff be appointed class representative;
3 C. An order that counsel for Plaintiff be appointed class counsel;
4 D. Unpaid wages, including overtime and double-time wages;
5 E. Premium wages;
6 F. Statutory penalties;
7 G. Civil penalties;
8 H. Declaratory relief;
9 I. Actual damages;
10 J. Restitution;
11 K. Pre-judgment interest;
12 L. Costs of suit;
13 M. Reasonable attorneys' fees; and
14 N. Such other relief as the Court deems just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
17 on all issues so triable.

18 Respectfully submitted,

19 THE SPIVAK LAW FIRM

20 Dated: February 17, 2021

21 By 
22 DAVID SPIVAK
23 MARALLE MESSRELIAN
24 Attorneys for Plaintiff, NICOLE SHAVER and
25 all others similarly situated
26
27
28



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL
AND EMAIL***

December 11, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Nicole Shaver/G and C Swan, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Nicole Shaver (hereafter “Shaver”) provides notice on behalf of herself and all individuals currently and formerly employed in California as unpaid interns and hourly employees, including but not limited to support staff, counselors, case managers, and in similar positions (hereafter referred to as “Aggrieved Employees”), by G and C Swan, Inc. (hereafter “G&C”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198 and 2802.

At all relevant times, G&C has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Shaver and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

G&C first employed Shaver on or about May 21, 2020 to work as an unpaid intern at its New Creation/His House addiction treatment center located at 2511 McCarty Dr., in Colton, California. G&C failed to compensate Shaver and the other Aggrieved Employees that it classified as unpaid interns for their hours worked. G&C also failed to provide Shaver and the other unpaid intern Aggrieved Employees with all meal periods and rest breaks required by California law.

On or about June 3, 2020, G&C began to employ Shaver as support staff at its New Creation/His House treatment center on McCarty Drive. Shaver also occasionally worked at G&C's treatment centers located at 3950 Prado Lane and 11646 Encanto Lane in Colton, California. Shaver worked alone at the treatment centers with no potential for relief from duty by other employees. Shaver worked for G&C continuously from the time of her hire until approximately September 7, 2020 when her employment ended.

At all relevant times, G&C paid Shaver and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, G&C classified Shaver and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Shaver and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. G&C scheduled Shaver to work alone at its treatment center on McCarty Drive Monday – Friday from 4:00 p.m.-midnight and Saturdays from 8:00 a.m.-4:00 p.m. Despite this, G&C failed to provide Shaver and the Aggrieved Employees with all timely rest and meal periods pursuant to California law. G&C failed to hire sufficient staff members to relieve Shaver and the Aggrieved Employees so they could take duty-free rest periods and duty-free meal periods, including but not limited to, two 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. G&C did not enter into valid on-duty meal period agreements with Shaver or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest

breaks. Shaver complained to supervisor Glenn Doty about G&C's failure to provide her and the Aggrieved Employees with timely, duty-free, rest and meal periods. In spite of this, G&C refused to make changes. Finally, G&C required Shaver and the Aggrieved Employees to remain on the premises at all times. G&C did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Moreover, Shaver and other Aggrieved Employees were unable to take their meal periods before the end of their 5th hour of work. Additionally, G&C failed to pay premium wages for days on which it failed to provide Shaver and the Aggrieved Employees with all timely, uninterrupted, and unrestricted meal and rest periods. In fact, G&C supervisors, including Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn, modified Shaver's and the other Aggrieved Employees' time records and deleted the premium wages that were automatically generated by the timekeeping application for their missed meal periods.

Further, at all relevant times, G&C required Shaver and other Aggrieved Employees to work at the other treatment centers, prior to the start of their shift, to sign documents and pick up items. G&C management, including supervisors Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn, would regularly contact Shaver and the other Aggrieved Employees on their personal cell phones to instruct them to run such errands, and/or to discuss scheduling. However, G&C failed to properly pay Shaver and the other Aggrieved Employees for this off-the-clock work.

At all relevant times, G&C required Shaver and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. G&C required Shaver and other Aggrieved Employees to use their personal cell phones in the course of performing their duties. G&C supervisors, including Glenn Doty and Patricia Owens, and Program Manager Andrew Wildasinn communicated with Shaver and the other Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, G&C did not reimburse Shaver and the Aggrieved Employees for their cell phone

expenses. G&C also required Shaver and the Aggrieved Employees to use their personal vehicles to travel to and from the other treatment centers and pick up necessary documents and supplies. G&C did not reimburse Shaver and the Aggrieved Employees for such mileage expenses.

As a result of the practices described above, G&C failed to provide Shaver and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Shaver and the other Aggrieved Employees' gross and net wages earned and the total hours worked. As a further result, G&C failed to timely pay Shaver and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

For the reasons herein, Shaver alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and Aggrieved Employees:

- a) G&C failed to pay Shaver and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;
- b) G&C failed to provide Shaver and the Aggrieved Employees with all meal periods;
- c) G&C failed to pay Shaver and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) G&C failed to provide Shaver and the Aggrieved Employees with all rest breaks;
- e) G&C failed to pay Shaver and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;

- f) G&C failed to reimburse Shaver and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) G&C failed to provide Shaver and the Aggrieved Employees with accurate itemized wage statements;
- h) G&C failed to timely pay Shaver and the Aggrieved Employees all earned and unpaid wages during their employment at G&C and at the time such employment ended; and
- i) G&C failed to maintain accurate employment records.

Accordingly, Shaver now seeks civil penalties on behalf of herself and the Aggrieved Employees based on G&C's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

"(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;..."

§ 2(P). At all relevant times during the applicable limitations period, Shaver was employed by G&C as support staff who performed the majority of her duties in a residential, inpatient addiction treatment facility. Accordingly, Shaver and the

Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods:

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

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

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

...

- (D) 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.

Within the health care industry, the term “hours worked” means the time during which an 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 (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. “It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.” *Id.* Respiratory therapists required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph’s Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

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. Wage Order 5, § 11(D).

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times during the applicable time period, G&C failed to provide Shaver and the Aggrieved Employees with all timely 30-minute duty-free meal periods. Further, G&C failed to compensate Shaver and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely meal periods as provided by California law.

Accordingly, Shaver seeks civil penalties for these Labor Code violations that G&C has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

“Hours worked” means 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, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, G&C required Shaver and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Shaver and the Aggrieved Employees to remain on work premises during their rest periods, G&C has intentionally and improperly failed to provide Shaver and the Aggrieved Employees with all duty-free rest periods. Further, G&C failed to compensate Shaver and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Shaver seeks civil penalties for these Labor Code violations that G&C has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2 of the Wage Order states,

“Hours worked” means 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, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the

rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, G&C knowingly failed to compensate Shaver and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed before clocking in for the start of their shifts.

Accordingly, Shaver now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless

of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, G&C required Shaver and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Shaver seeks civil penalties for these Labor Code violations that G&C has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer;
and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

G&C did not pay Shaver and the Aggrieved Employees minimum, and overtime wages for work it required them to perform before clocking in for the start of their shifts. G&C failed to provide Shaver and the Aggrieved Employees with all meal and rest periods in compliance with California law. G&C also failed to provide Shaver and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. G&C knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Shaver and the Aggrieved Employees. As a result, G&C has failed to properly itemize Shaver and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, G&C has violated California Labor Code § 226.

Accordingly, Shaver seeks civil penalties for the Labor Code violations that G&C has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of G&C's failure to pay Shaver and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, G&C failed to timely pay all wages due during employment. Accordingly, Shaver now seeks civil penalties for the Labor Code violations that G&C has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

Failure To Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, if 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, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the Employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

G&C did not pay Shaver and the Aggrieved Employees minimum and overtime wages for work it required them to perform before clocking in for the start of their shifts. G&C failed to provide Shaver and the Aggrieved Employees with meal and rest periods in compliance with California law. G&C also failed to provide Shaver and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Shaver and the Aggrieved Employees at the time of termination, G&C is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Shaver now seeks civil penalties for these Labor Code violations that G&C has committed against her and the other Aggrieved Employees as follows:

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

///

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

G&C has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Shaver and the Aggrieved Employees. Accordingly, Shaver seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this

matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Spivak".

David Spivak, Esq.

david@spivaklaw.com

cc: Nicole Shaver
Walter Haines, Esq.

G and C Swan, Inc.
c/o Glenn Swanson, Agent for service of process
1354 Carlos Place,
Ontario, CA 91764