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Superior Court of California
County of Los Angeles

APR 15 2021

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Attorneys for Plaintiffs Antoinette Barba and Francisca Guzman,
individually, and on behalf of all others similarly situated.

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

ANTOINETTE BARBA, FRANCISCA
GUZMAN, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

EMANATE HEALTH; and DOES 1
through 20, inclusive,

Defendants.

Case No. 20STCV49584

Assigned for all Purposes to:
Yvette M. Palazuelos; Dept. 9

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Pay All Wages Due Within the Required Time and Upon Separation of Employment;
5. Failure to Furnish Accurate Wage Statements; and
6. Violation of Business and Professions Code §§ 17200, *et seq.*
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

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1 Plaintiffs Antoinette Barba and Francisca Guzman, individually and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Antoinette Barba and Francisca Guzman (“Plaintiffs”) bring this putative
5 class and representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab.
6 Code. § 2698 *et seq.*, pursuant to California Code of Civil Procedure section 382, on behalf of
7 Plaintiffs and all non-exempt employees employed by, or formerly employed by, Emanate Health;
8 and DOES 1 through 20, inclusive (collectively, “Defendants”) within the State of California.

9 2. Defendants are in the business of healthcare.

10 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay wages, including overtime wages at the correct rate;
- 17 (b) Failing to provide meal periods or compensation in lieu thereof;
- 18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
19 thereof;
- 20 (d) Willfully failing to provide accurate, semi-monthly itemized wage
21 statements; and
- 22 (e) Failing to pay all wages due upon separation of employment.

23 5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf
24 of themselves and all other members of the general public similarly situated in California to
25 recover, among other things, unpaid wages and benefits, interest, attorney’s fees, costs and
26 expenses and penalties (to the extent permitted by law) pursuant to Labor Code §§ 201, 202, 203,
27 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2698, *et seq.*

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JURISDICTION AND VENUE

6. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

THE PARTIES

9. Plaintiffs Antoinette Barba and Francisca Guzman are citizens of California. Plaintiffs were employed by Defendants during the Class Period in California.

10. Plaintiffs are informed and believe, and thereon allege, that Defendants were and are corporations doing business in California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are engaged throughout this county and the State of California.

11. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named Defendants once their names and capacities become known.

12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20 are the partners, agents, owners, shareholders, managers or employees of Defendants, at all relevant times.

1 20. Plaintiffs reserve the right to establish other or additional subclasses, or modify any
2 Class or Subclass definition, as appropriate.

3 21. Members of the class and subclass described above will be collectively referred to
4 as “class members.” Plaintiffs reserve the right to re-define the above class and subclass and add
5 additional subclasses as appropriate based on investigation, discovery and specific theories of
6 liability.

7 22. This action has been brought and may properly be maintained as a class action
8 under the California Code of Civil Procedure § 382 because there are common questions of law and
9 fact as to the Class that predominate over questions affecting only individual members including,
10 but not limited to:

- 11 a. Whether Defendants failed to pay Plaintiffs and class members wages owed
12 at the correct rate of pay;
- 13 b. Whether Defendants required Plaintiffs and class members to work over 8
14 hours per day, over 12 hours per day and/or over 40 hours per week and
15 failed to pay them proper overtime compensation;
- 16 c. Whether Defendants deprived Plaintiffs and class members of meal periods
17 or required Plaintiffs and class members to work through meal periods;
- 18 d. Whether Defendants deprived Plaintiffs and class members of paid rest
19 breaks or required Plaintiffs and class members to work through rest breaks;
- 20 e. Whether Defendants failed to timely pay Plaintiffs and class members all
21 wages due upon termination or within 72 hours of resignation;
- 22 f. Whether Defendants failed to furnish Plaintiffs and class members with
23 accurate, itemized wage statements; and
- 24 g. Whether Defendants engaged in unfair business practices in violation of
25 Business & Professions Code §§ 17200, *et seq.*

26 23. There is a well-defined community of interest in this litigation and the proposed
27 class and subclasses are readily ascertainable:
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- 1 (a) Numerosity: The members of the class and subclass are so numerous that joinder
2 of all members is impractical. Although the members of the entire class and
3 subclass are unknown to Plaintiffs at this time, on information and belief, the class
4 is estimated to be greater than one hundred (100) individuals. The identities of the
5 class and subclass are readily ascertainable by inspection of Defendants'
6 employment and payroll records.
- 7 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims
8 (or defenses, if any) of the class because Defendants' failure to comply with the
9 provisions of California wage and hour laws entitled each class member to similar
10 pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical
11 of the injuries sustained by the class and subclass, because they arise out of and are
12 caused by Defendants' common course of conduct as alleged herein.
- 13 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the interests
14 of all members of the class and subclass because it is in their best interests to
15 prosecute the claims alleged herein to obtain full compensation and penalties due
16 them and the class and subclass. Plaintiffs' attorneys, as proposed class counsel,
17 are competent and experienced in litigating large employment class actions and
18 versed in the rules governing class action discovery, certification and settlement.
19 Plaintiffs have incurred and, throughout the duration of this action, will continue to
20 incur attorney's fees and costs that have been and will be necessarily expended for
21 the prosecution of this action for the substantial benefit of each class member.
- 22 (d) Superiority: The nature of this action makes use of class action adjudication
23 superior to other methods. A class action will achieve economies of time, effort
24 and expense as compared with separate lawsuits, and will avoid inconsistent
25 outcomes because the same issues can be adjudicated in the same manner and at
26 the same time for the entire class and subclass. If appropriate this Court can, and
27 is empowered to, fashion methods to efficiently manage this case as a class action.
28

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

9 **GENERAL ALLEGATIONS**

10 24. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
11 persons as non-exempt employees.

12 25. Defendants employed Plaintiffs in a non-exempt position at Defendants' California
13 business location(s) during the relevant time period.

14 26. Defendants continue to employ non-exempt employees within California.

15 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
17 were knowledgeable about California wage and hour laws, employment and personnel practices
18 and the requirements of California law.

19 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and class members were entitled to receive certain wages for
21 overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class
22 members were not properly paid for all of their overtime because Defendants failed to correctly
23 include shift differentials and other incentive pay in the overtime rate and/or failed to correctly
24 calculate the blended overtime and double time rates.

25 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and class members were entitled to receive all meal periods or
27 payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when
28 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC

1 Wage Orders, Plaintiffs and class members did not receive all meal periods or payment of one (1)
2 additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not receive
3 a timely, uninterrupted meal period.

4 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
6 payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when
7 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class
8 members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiffs'
9 and class members' regular rate of pay when a rest break was missed.

10 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and Waiting Time Subclass members were entitled to timely
12 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiffs
13 and Waiting Time Subclass members did not receive payment of all wages including, but not
14 limited to, unpaid overtime compensation and vacation pay at the regular rate of pay, within
15 permissible time periods.

16 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to receive complete and accurate
18 wage statements in accordance with California law. In violation of the California Labor Code,
19 Plaintiffs and class members were not furnished with complete and accurate wage statements
20 showing their accurate gross and net wages, and the number of hours worked at each applicable
21 hourly rate, among other things.

22 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known they had a duty to compensate Plaintiffs and class members, and Defendants
24 had the financial ability to pay such compensation but willfully, knowingly and intentionally failed
25 to do so all in order to increase Defendants' profits.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 (Violation of Labor Code §§ 200 *et seq.*, 510, 1194, 1198; IWC Wage Order)

4 34. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 35. During the relevant time period, Defendants were required to compensate Plaintiffs
7 and class members for all hours worked, pursuant to Labor Code §§ 200 *et seq.*, 510, 1194, 1198,
8 and the applicable IWC Wage Order.

9 36. Labor Code § 510 codifies the right to overtime compensation at one and one-half
10 times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40)
11 hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime
12 compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a
13 day or in excess of eight (8) hours in a day on the seventh day of work.

14 37. During the relevant time period, Defendants paid Plaintiffs and Class Members less
15 than the required rate for wages when Defendants failed to pay proper compensation for all hours
16 worked, including but not limited to failing to pay vacation time at the regular rate of pay.

17 38. During the relevant time period, Defendants regularly failed to pay all wages to
18 Plaintiffs and class members for all hours worked at the appropriate overtime rate pursuant to
19 Labor Code §§ 510, 1194, and 1198.

20 39. As a direct and proximate result of Defendants' failure to pay Plaintiffs and class
21 members the required wages, Plaintiffs and class members are entitled to recover the unpaid
22 balance of their wages, including overtime compensation, as well as interest, costs and attorneys'
23 fees.

24 40. Plaintiffs and Class Members are entitled to recover the unpaid balance of their
25 wages, as well as interest, costs, and attorneys' fees.

26 41. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
27 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

4 42. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 43. Labor Code § 226.7 provides that no employer shall require an employee to work
7 during any meal period mandated by the IWC Wage Orders.

8 44. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
9 any person for a work period of more than five (5) hours without a meal period of not less than 30
10 minutes, except that when a work period of not more than six (6) hours will complete the day’s
11 work the meal period may be waived by mutual consent of the employer and the employee.”

12 45. Labor Code § 512(a) provides that an employer may not require, cause or permit
13 an employee to work for a period of more than five (5) hours per day without providing the
14 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
15 total work period per day of the employee is not more than six (6) hours, the meal period may be
16 waived by mutual consent of both the employer and the employee.

17 46. Labor Code § 512(a) also provides that an employer may not employ an employee
18 for a work period of more than ten (10) hours per day without providing the employee with a second
19 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
20 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
21 and the employee only if the first meal period was not waived.

22 47. During the relevant time period, Plaintiffs and class members did not receive
23 compliant meal periods for working more than five (5) and/or ten (10) hours per day because,
24 among other things, Defendants did not provide timely meal periods for shifts over five hours, and
25 Defendants did not provide a second meal period for shifts over 10 hours.

26 48. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
27 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
28 compensation for each work day that the meal period is not provided.

1 49. At all relevant times, Defendants failed to pay Plaintiffs and class members meal
2 period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
3 section 11 of the applicable IWC Wage Order.

4 50. As a result of Defendants' failure to pay Plaintiffs and class members an additional
5 hour of pay for each day a meal period was not provided, Plaintiffs and class members suffered and
6 continue to suffer a loss of wages and compensation.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PERMIT REST BREAKS**

9 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

10 51. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 52. Labor Code § 226.7(a) provides that no employer shall require an employee to work
13 during any rest period mandated by the IWC Wage Orders.

14 53. Section 12 of the applicable IWC Wage Order states "every employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period" and the "authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof"
18 unless the total daily work time is less than three and one-half (3½) hours.

19 54. During the relevant time period, Plaintiffs and class members did not receive a ten
20 (10) minute rest period for every four (4) hours or major fraction thereof worked because they were
21 required to work through their daily rest periods and/or were not authorized to take their rest
22 periods.

23 55. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
24 an employer to pay an employee one additional hour of pay at the employee's regular rate of
25 compensation for each work day that the rest period is not provided.

26 56. At all relevant times, Defendants failed to pay Plaintiffs and class members rest
27 period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
28 section 12 of the applicable IWC Wage Order.

1 57. As a result of Defendants' failure to pay Plaintiffs and class members an additional
2 hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered and
3 continue to suffer a loss of wages and compensation.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

6 (Violations of Labor Code §§ 201, 202, 203, 227.3)

7 58. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

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

15 60. Labor Code § 227.3 provides all accrued vacation pay is due upon termination of
16 employment.

17 61. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
18 Waiting Time Subclass members who are no longer employed by Defendants all their earned wages
19 upon termination including, but not limited to, proper overtime compensation, either at the time of
20 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

21 62. Defendants' failure to pay Plaintiffs and Waiting Time Subclass members who are
22 no longer employed by Defendants all their earned wages at the time of discharge or within seventy-
23 two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201, 202, and
24 227.3.

25 63. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
26 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
27 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
28 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

64. Plaintiffs and Waiting Time Subclass members are entitled to recover from Defendants the statutory penalty which is defined as Plaintiffs and class members' regular daily wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

(Violation of Labor Code § 226)

65. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

66. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions and reimbursements, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, the name and address of the legal entity that is the employer and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

67. Defendants have intentionally and willfully failed to provide Plaintiffs and class members with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly state the gross and net wages earned, total hours worked, and all applicable hourly rates in effect and the number of hours worked at each hourly rate by Plaintiffs and class members.

68. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and class members have suffered injury and damage to their statutorily protected rights. Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). Plaintiffs have had to file this lawsuit in order to determine the extent of the underpayment of wages, thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs would

1 not have had to engage in these efforts and incur these costs had Defendants provided the accurate
2 wages earned. This has also delayed Plaintiffs' ability to demand and recover the underpayment
3 of wages from Defendants.

4 69. California Labor Code § 226(a) requires an employer to pay the greater of all actual
5 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
6 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
7 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
8 with California Labor Code § 226(a).

9 70. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
10 class members from knowing, understanding and disputing the wages paid to them, and resulted
11 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
12 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members
13 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
14 be shown according to proof at trial.

15 71. Plaintiffs and class members are also entitled to injunctive relief under California
16 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and
17 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

18 **SIXTH CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

20 72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 73. Defendants' conduct, as alleged herein, has been and continues to be unfair,
23 unlawful and harmful to Plaintiff, class members and to the general public. Plaintiffs seek to enforce
24 important rights affecting the public interest within the meaning of Code of Civil Procedure §
25 1021.5.

26 74. Defendants' activities, as alleged herein, violate California law and constitute
27 unlawful business acts or practices in violation of California Business and Professions Code §§
28 17200, *et seq.*

1 75. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
2 on the violation of any state or federal law.

3 76. Defendants' policies and practices have violated state law in at least the following
4 respects:

5 (a) Failing to pay Plaintiffs and class members all overtime compensation in violation
6 of Labor Code §§ 200 *et seq.*, 510, 1194, and 1198;

7 (b) Failing to provide meal periods without paying Plaintiffs and class members
8 premium wages for every day said meal periods were not provided in violation of
9 Labor Code §§ 226.7 and 512;

10 (c) Failing to authorize or permit rest breaks without paying Plaintiffs and class
11 members premium wages for every day said rest breaks were not authorized or
12 permitted in violation of Labor Code § 226.7;

13 (d) Failing to timely pay all earned wages to Plaintiffs and Waiting Time Subclass
14 members upon separation of employment in violation of Labor Code §§ 201, 202
15 203, and 227.3; and

16 (e) Failing to provide accurate, itemized wage statements to Plaintiffs and class
17 members in violation of Labor Code § 226.

18 77. Defendants intentionally avoided paying Plaintiffs' and class members' wages and
19 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
20 undercut their competitors and establish and gain a greater foothold in the marketplace.

21 78. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class
22 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
23 during a period that commences four years prior to the filing of the Complaint; an award of
24 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
25 award of costs.

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1 **EIGHTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

3 79. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
4 though fully set forth herein.

5 80. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
8 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
9 an aggrieved employee on behalf of himself or herself and other current or former employees
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 81. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 82. Defendants' conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

- 18 (a) violation of Labor Code §§ 201-203, 204, 210, 227.3, 510, 558, 1194, and
19 1198 for failure to timely pay all earned wages (including minimum wage
20 and overtime wages) owed to Plaintiffs and other aggrieved employees
21 during employment and upon separation of employment as herein alleged;
- 22 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal
23 periods to Plaintiffs and other aggrieved employees and failure to pay
24 premium wages for missed meal periods as herein alleged;
- 25 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
26 and other aggrieved employees and failure to pay premium wages for
27 missed rest periods as herein alleged;
- 28

1 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiffs and other aggrieved employees as herein alleged;
3 and

4 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
5 and complete records showing, among other things, the hours worked daily
6 by and the wages paid to aggrieved employees.

7 83. Plaintiffs are “aggrieved employees” because they were employed by the alleged
8 violator and had one or more of the violations committed against them, and therefore is properly
9 suited to represent the interests of all other aggrieved employees.

10 84. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
11 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and
12 all other aggrieved employees under PAGA.

13 85. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
14 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
15 cited above.

16 86. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
17 herein.

18 **PRAYER FOR RELIEF**

19 Plaintiffs, on their own behalf and on behalf of all others similarly situated, prays for relief
20 and judgment against Defendants, jointly and severally, as follows:

- 21 1. For certification of this action as a class action;
22 2. For appointment of Antoinette Barba and Francisca Guzman as the class
23 representatives;
24 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
25 4. For compensatory damages in an amount according to proof with interest thereon;
26 5. For economic and/or special damages in an amount according to proof with interest
27 thereon;
28

1 6. For reasonable attorney's fees, costs of suit and interest to the extent permitted by
2 law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, and
3 2698 *et seq*;

4 7. For statutory penalties to the extent permitted by law, including those pursuant to
5 the Labor Code and IWC Wage Orders;

6 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

7 9. For an order requiring Defendants to restore and disgorge all funds to each
8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or
9 fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§
10 17200, *et seq.*;

11 10. For an award of damages in the amount of unpaid compensation including, but not
12 limited to, unpaid wages, benefits and penalties;

13 11. For pre-judgment interest;

14 12. For civil penalties; and

15 13. For such other relief as the Court deems just and proper.

16 Dated: April 15, 2021

AEGIS LAW FIRM, PC

17
18 By: 

19 Jessica L. Campbell
20 Attorneys for Plaintiffs Antoinette Barba and
21 Francisca Guzman

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On April 15, 2021, I served the foregoing document entitled:

5 • **FIRST AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Aimee Mackay

Douglas Hart

8 Anahi Cruz

MORGAN LEWIS & BOCKIUS, LLP

9 300 South Grand Avenue, Twenty-Second Floor

10 Los Angeles, CA 90071-3132

11 Telephone: 213.612.2500

Fax: 213.612.2501

aimee.mackay@morganlewis.com

douglas.hart@morganlewis.com

anahi.cruz@morganlewis.com

14 *Attorneys for Defendant:*

EMANATE HEALTH

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
18 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

19 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
20 practice of Aegis Law Firm PC for collection and processing correspondence for
21 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

22 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
23 electronic transmission through Case Anywhere to the above listed email addresses on
the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R.*
Civ. Proc. 5(b)(3).)

25 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
26 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on April 15, 2021, at Irvine, California.

4 
Andrea Drocco