

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RONALD FLORES NUNFIO, an individual,

PLAINTIFF,

v.

DEANCO HEALTHCARE, LLC, a
California Limited Liability Company, and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: **21STCV02209**

**INDIVIDUAL AND PAGA
REPRESENTATIVE COMPLAINT FOR:**

1. Violation of Labor Code § 226 (f) and (h)
2. Violation of Labor Code § 1198.5
3. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
4. Failure to Pay Overtime Wages In Violation of Labor Code § 510
5. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512; IWC Wage Order No. 5-2001
6. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7; IWC Wage Order No. 5-2001
7. Violation of Labor Code § 226(e)
8. Violation of Labor Code § 2802
9. Violation of Business & Professions Code § 17200
10. Penalties Pursuant to PAGA for violations of Labor Code §§ 204, 210, 226(a) and (c), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage Order No. 5-2001

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. Plaintiff Ronald Flores, an individual, on behalf of himself and on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, et seq. (“PAGA”), complains of Defendants Deanco Healthcare, LLC (“Deanco”) and the Doe Defendants (“Defendants”) and each of them, as follows.

2. This is a representative action brought pursuant to Labor Code § 2698, et seq., on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt, hourly employee for one or more pay periods from January 19, 2020 and continuing into the present. (“Aggrieved Employees”)
- (2) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt, non-exempt hourly employee and who worked an evening or graveyard shift commencing at 2:00 pm or later for one or more pay periods from January 19, 2020 and continuing into the present. (“Evening/Graveyard Shift Aggrieved Employees”).
- (3) all individuals who were employed by Deanco Healthcare, LLC or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from January 19, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (4) all individuals who were employed by Deanco Healthcare, LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where the employee also earned non-discretionary bonuses, incentive pay, and/or hazard pay from January 19, 2020 and continuing into the present; (“Hazard Pay Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Overtime Aggrieved Employees.”

- (5) all individuals who were employed by Deanco Healthcare, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or other similar position from January

19, 2020 and continuing into the present. (“Meal Period Aggrieved Employees”);

(6) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from January 19, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);

(7) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California and who submitted a record request pursuant to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from January 19, 2020 and continuing into the present. (“Record Aggrieved Employee”);

(8) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California and who submitted a record request pursuant to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from January 19, 2020 and continuing into the present. (“Evening Shift Aggrieved Employee”)

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate.

3. This case arises out of Defendants failure to pay minimum wages and overtime wages for all hours worked, failure to provide lawful meal periods, failure to provide lawful rest periods, failure to timely respond and continued failure to produce documents that Plaintiff is legally entitled to obtain and/or review and inspect in accordance with Labor Code §§ 226 and 1198.5, failure to reimburse for business expenses, failure to provide lawful itemized wage statements and other unlawful practices detailed herein and the attached PAGA Notice. **Exhibit 1.**

4. Plaintiff, on behalf of the State of California as a private attorney general brings claims for alleged Labor Code violations committed against himself and all aggrieved employees presently or formerly employed by Defendant during the liability period pursuant to Labor Code § 2698, *et seq.* seeking penalties for Defendant violations of California Labor Code §§ 204, 210, 226(a) and (c), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage Order No. 5-2001.¹

¹ The PAGA claims involving the wage orders are limited to the extent that the violation of the Labor Code gives rise to a violation of the Labor Code such as under Labor Code §§ 226.7 and 1198.

1 5. Based upon the allegations herein, Plaintiff and all aggrieved employees are
2 aggrieved employees within the meaning of Labor Code § 2698, *et seq.*

3 6. At all times relevant hereto, Plaintiff was and is a resident of Los Angeles County
4 and is currently employed by Defendants in Los Angeles County. Moreover, at all times relevant
5 hereto, Plaintiff and the aggrieved employees are and/or were employed by Defendants and any
6 subsidiaries or affiliated companies and Does 1 through 50 (who include individuals acting on
7 behalf an employer within the meaning of Labor Code § 558.1) within the State of California
8 within the statutory period applicable to his claims. Based upon information and belief, Deanco
9 and the Doe Defendants operate as joint employers and/or as a single enterprise or alter egos of
10 each other. Throughout his employment, Plaintiff was regularly and consistently subject to the
11 common policies and practices utilized by Defendants.

12 7. At all times relevant hereto, Defendants have operated as joint employers. At all
13 times throughout their employment, Plaintiff was regularly and consistently subject to the
14 common policies utilized by Defendants. Accordingly, all Defendants engaged, suffered and
15 permitted Plaintiff to perform services from which they benefitted. Moreover, the aforementioned
16 entities had the right to exercise control over the wages, hours, wage statement policies and
17 practices and/or working conditions over Plaintiff at all relevant times herein, so as to be
18 considered the joint employer of Plaintiff. By reason of their status as joint employers, they are
19 each liable for the violations of the California Labor Code as to Plaintiff as set forth herein.

20 8. Defendant, DOE 1, was and is, upon information and belief, the owner and
21 managing agent within the meaning of Labor Code § 558.1 and Civil Code § 3294 who willfully
22 failed to timely produce Plaintiff's records, failed to provide the records required by Labor Code
23 § 226, and willfully failed to provide both the penalties and the records required absent the
24 obtaining of an injunction necessitating the filing of this lawsuit. *King v. U.S. Bank Nat'l Ass'n*, 53
25 Cal. App. 5th 675, 714 (2020) (affirming that an entry-level employee who was delegated with
26 the discretion to act on the Company's behalf with respect to a certain issue qualified as a
27 managing agent within the meaning of Civil Code § 3294). DOE 1 may also be a "person acting
28 on behalf of employer" within the meaning of Labor Code § 558.1.

1 9. Defendant, DOE 2, was and is, upon information and belief, the owner and
2 managing agent within the meaning of Labor Code § 558.1 who willfully failed to timely produce
3 Plaintiff's records, failed to provide the records required by Labor Code § 226, and willfully
4 failed to provide Plaintiff with his earned minimum wages, overtime wages, meal period
5 premiums, and rest period premiums after it was requested and despite knowing that Plaintiff was
6 entitled to such wages. *King v. U.S. Bank Nat'l Ass'n*, 53 Cal. App. 5th 675, 714 (2020) (affirming
7 that an entry-level employee who was delegated with the discretion to act on the Company's
8 behalf with respect to a certain issue qualified as a managing agent within the meaning of Civil
9 Code § 3294). DOE 2 may also be a "person acting on behalf of employer" within the meaning of
10 Labor Code § 558.1.

11 10. At all applicable times hereto, Plaintiff worked for Defendants within the state of
12 California and was covered by California Industrial Welfare Commission Occupational Wage
13 Order Nos. 5-2001. Based upon information and belief, Defendants classified Plaintiff and the
14 other aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest
15 periods.

16 11. In addition, during the statutory period applicable to the claims at issue, Plaintiff
17 and the aggrieved employees worked shifts in excess of eight (8) hours, ten (10) hours, and/or
18 twelve (12) hours a day and in excess of forty (40) hours per week.

19 12. Labor Code § 1198.5(a) provides that "every current and former employee, or his
20 or her representative, has the right to inspect and receive a copy of the personnel records that the
21 employer maintains relating to the employee's performance or to any grievance concerning the
22 employee." Pursuant to Labor Code § 1198.5(b) requires the employer to "make the contents of
23 those personnel records available for inspection to the current or former employee, or his or her
24 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days
25 from the date the employer receives a written request." "If an employer fails to permit a current or
26 former employee, or his or her representative, to inspect or copy personnel records within the
27 times specified in this section, or times agreed to by mutual agreement as provided in this section,
28

1 the current or former employee or the Labor Commissioner may recover a penalty of seven
2 hundred fifty dollars (\$750) from the employer.

3 13. Similarly, an employee may request a copy of their pay records within the
4 meaning of Labor Code § 226(a) in accordance with Labor Code § 226(c). Under Labor Code §
5 226(c), “an employer who receives a written or oral request to inspect or receive a copy of
6 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
7 the request as soon as practicable, but no later than 21 calendar days from the date of the request.”
8 Pursuant to Labor Code § 226(f) if an employer fails to comply with a request pursuant to Labor
9 Code § 226(f), the employer must pay the employee a penalty of \$750.

10 14. On September 22, 2020, Plaintiff submitted a request for records under Labor
11 Code §§ 226, 432, and 1198.5 via USPS Certified Mail (Nos. 7019 0700 0001 5627 4911 and
12 7019 0700 0001 5627 4904) at its location in Panorama City, CA 91402 and at its location in
13 Beverly Hills, CA 90211 (it’s legal entity and mailing address per its filings with the California
14 Secretary of State).

15 15. When responding to a records request, Labor Code § 226 obligates an employer to
16 provide either a duplicate of an employee’s itemized wage statements or “a computer-generated
17 record that accurately shows all of the following information:

18 (1) gross wages earned, (2) total hours worked by the employee, except as provided in
19 subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if
20 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
21 made on written orders of the employee may be aggregated and shown as one item, (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
23 name of the employee and only the last four digits of his or her social security number or
24 an employee identification number other than a social security number, (8) the name and
25 address of the legal entity that is the employer and, if the employer is a farm labor
26 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
27 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours worked at each hourly
rate by the employee

16. Instead of providing the records that Plaintiff requested and as required by Labor
Code § 226, Defendant willfully, knowingly, and intentionally—failing to have a policy that
complies with Labor Code § 226 is sufficient to establish a knowing and intentional violation per
the plain language of the statute---violated Labor Code § 226(c) by providing documents that did

not include much of the information required by Labor Code § 226(a) including the number of hours that Plaintiff worked each pay period, the hourly rate in effect each pay period, the start date for the pay periods for which he was paid, the name and address of the legal entity that is the employer, provided conflicting information about the total amount of gross wages earned each pay date by omitting information about hazard pay. Based upon information and belief, Defendants engaged in such conduct for the explicit purpose of concealing the fact that it improperly failed to include hazard pay when calculating and paying overtime wages to Plaintiff and the other aggrieved employees identified in Plaintiff's PAGA Notice a copy of which is attached hereto as **Exhibit 1**.

17. Based upon information and belief, the USPS tracking records indicate that Deanco Healthcare, LLC received the record request on September 24, 2020 at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State). Pursuant to Labor Code §§ 226 and 1198.5, Plaintiff's pay records were due within 21 days of the receipt of his request (October 15, 2020) and his personnel records within 30 days of receipt (October 24, 2020).

18. Deanco did not respond at all to Plaintiff's record request until November 5, 2020—more than 30 days after receiving Plaintiff's request—as indicated by the excerpts from the Fedex envelope and the fact that many documents indicate that they were printed on November 4, 2020:

11/4/2020

ADP

Pay Summaries - Rollup Totals

Name Flores Nunfio, Ronald

	YEAR & WEEK	PAY DATE	PERIOD END DATE	GROSS	NET	CHECK / VOUCHER #	CO / FILE #
	2020 - 44 - 1	10/30/2020	10/24/2020	\$125.00	\$109.18	12907367	WD6/067433

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FedEx
Express
Package
US Airbill

RT 929 6 D 16:30 2762 11.06
ST 66
Extremely Urgent

FRI - 06 NOV AA
STANDARD OVERNIGHT
90035
CA-US
LAX

WZ BABA

Form 0215
Express Package Service

1 From
Date 11/5/20
Sender Name Winston Law Group, P.C.
Phone 918 787-2222
Company MISSION COMMUNITY HOSPITAL
Address 14330 ROCKY BLVD
City PANORAMA CITY State CA ZIP 91402-6777

2 Your Internal Billing Reference

3 To
Recipient's Name
Company Winston Law Group, P.C.
Address 1180 S Beverly Dr. Suite 300
City Los Angeles State CA ZIP 90035

4 Express Package Service
Next Business Day
FedEx First Overnight
FedEx Priority Overnight
FedEx Standard Overnight
FedEx 2Day A.M.
FedEx 2Day
FedEx Express Saver

5 Packaging
FedEx Envelope
FedEx Pak
FedEx Box
FedEx Tube
Other

6 Special Handling and Delivery Signature Options
Saturday Delivery
No Signature Required
Direct Signature
Indirect Signature
Does this shipment contain dangerous goods?
No
Yes
Dry Ice
Cargo Aircraft Only

7 Payment Bill to:
Sender
Recipient
Third Party

14 19. Deanco did not respond at all to Plaintiff's record request until November 5, 2020
15 as indicated by the excerpts from the Fedex envelope and the fact that many documents indicate
16 that they were printed on November 4, 2020:

17 20. Instead of providing the records that Plaintiff requested and as required by Labor
18 Code § 226, Defendant willfully, knowingly, and intentionally—failing to have a policy that
19 complies with Labor Code § 226 is sufficient to establish a knowing and intentional violation per
20 the plain language of the statute---violated Labor Code § 226(c) by providing documents that did
21 not include much of the information required by Labor Code § 226(a) including the number of
22 hours that Plaintiff worked each pay period, the hourly rate in effect each pay period, the start
23 date for the pay periods for which he was paid, the name and address of the legal entity that is the
24 employer, provided conflicting information about the total amount of gross wages earned each
25 pay date by omitting information about hazard pay. Based upon information and belief,
26 Defendants engaged in such conduct for the explicit purpose of concealing the fact that it
27 improperly failed to include hazard pay when calculating and paying overtime wages.

1 21. Plaintiff sent Defendant a follow-up letter on December 11, 2020 requesting that it
2 provide Plaintiff's pay records within the meaning of Labor Code § 226(a) and (c) and the
3 penalties for failing to timely produce his records. Plaintiff requested that Defendant provide such
4 records by December 31, 2020, but Defendant consciously elected to continue to violate Labor
5 Code §§ 226(a), (c), (f) and 1198.5(k) by refusing to provide the records and penalties. Plaintiff
6 alleges that Defendant engaged in the same or similar conduct with respect the other Record
7 Aggrieved Employee in an effort to conceal its unlawful practices, to avoid complying with
8 California's record request laws, and/or as part of a regular and consistent policy and practice.

9 22. Labor Code § 1197 states the California requirement that employees must be paid
10 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
11 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
12 "any employee receiving less than the legal minimum wage...to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 5-2001
14 obligates employers to pay each employee minimum wages for all hours worked.

15 23. At all times relevant hereto, Defendants required Plaintiff and all aggrieved
16 employees to regularly perform work-off-the-clock for which they did not receive any
17 compensation including, but not limited to, during meal periods and when they called them on
18 their personal cell phones. Throughout their employment with Deanco, Deanco has failed to pay
19 Plaintiff and all aggrieved employees for all hours worked including minimum wages for
20 overtime hours, overtime wages, and for the time associated with interrupted meal periods.
21 Plaintiff previously reported in August 2020 that he was being contacted while off-the-clock on
22 his personal cell phone in and not receiving compensation for all hours worked in violation of
23 Labor Code §§ 1194, 1197, 1197.1, 1198, and 2802. This includes complaining about his
24 supervisor texting him assignments and questions about work while he was off-the-clock on his
25 phone. There are also several instances where he worked more than eight (8) hours in a day, but
26 was not paid either minimum wages or at his overtime rate for such hours. Instead, Mr. Flores
27 was only paid eight (8) hours of work on these occasions. Nevertheless, Defendants willfully
28

1 refused to compensate Plaintiff for off-the-clock work. Defendant engaged in the same conduct
2 with respect to all aggrieved employees.

3 24. In addition, during the statutory period applicable to their claims, Plaintiff and the
4 other aggrieved employees' meal periods were regularly interrupted, but Defendants failed to
5 provide either a meal period premium and failed to compensate them for the time worked during
6 the meal periods in violation of Labor Code §§ 226.7, 512, and 1194. *Kaanaana v. Barrett*
7 *Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (affirming the award of PAGA penalties
8 for violations of Labor Code § 512 where employees meal periods were interrupted and
9 remanding to the trial court the amount of PAGA penalties that should be awarded based upon the
10 minimum wage violations associated with the same interrupted meal periods.).

11 25. Labor Code § 510 requires an employer to compensate an employee who works
12 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
13 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
14 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
15 employees at no less than twice the regular rate of pay when an employee works more than
16 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
17 In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not
18 agree to work for a lesser wage.

19 26. In addition, Labor Code § 1197 states the California requirement that employees
20 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
21 local law, and any payment of less than the minimum wage is unlawful.

22 27. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and
24 the standard conditions of labor for employees. The employment of any employee for longer
25 hours than those fixed by the order or under conditions of labor prohibited by the order is
26 unlawful.”

27 28. As discussed in detail above, during the statutory period applicable to their claims
28 Defendant failed to pay Plaintiff and the other aggrieved employees for all hours worked. In

1 many such instances Plaintiff and the aggrieved employees had already worked more than eight
2 (8) hours in a day and/or forty (40) hours in a week when Defendants forced them to work-off-
3 the-clock and/or Defendants failed to include such time when determining Plaintiff and the
4 aggrieved employees' eligibility for overtime and calculating and paying their wages. For
5 instances, there were numerous occasions where Plaintiff had already worked more than eight (8)
6 hours in a day, but was not paid either minimum wages or at his overtime rate for such hours.
7 Instead, Plaintiff was only paid eight (8) hours of work on these occasions. Defendants engaged
8 in such conduct against Plaintiff and the aggrieved employees during the statutory period
9 applicable to their claims.

10 29. Separate and independent of the off-the-clock time, during the statutory period
11 applicable to their claims, Defendant also regularly and consistently failed to include incentive
12 pay and other regular expected compensation when calculating and paying Plaintiff and the
13 aggrieved employees' overtime wages. This includes, but is not limited to "Hazard Pay."² Such
14 compensation must be included in the regular rate when calculating and paying overtime as
15 indicated by the Department of Labor's Guidance on the Issue—which the DLSE has noted in the
16 IWC adopted for purposes of California law:

17 **20. I am an employee of a private employer that began paying me**
18 **incentive payments, such as hazard pay, for working during the**
19 **COVID-19 emergency. Do those incentive payments have to be**
20 **included in the regular rate that is used to compute my overtime pay?**

21 Yes. Payments your employer provides you to perform work constitutes
22 compensation for employment that must be included in the regular rate,
23 subject to eight exclusions described in section 7(e) of the FLSA. None of
24 those exclusions apply to the incentive payments described above.

25 <https://www.dol.gov/agencies/whd/flsa/pandemic#q20>³

26 ² If Defendants reduce the employees' entitlement to Hazard Pay as a result of this lawsuit, the aggrieved employees
27 will be entitled to bring a retaliation claim pursuant to Labor Code §§ 98.6 and 1102.5. *See e.g., Desimone v. Allstate*
28 *Ins. Co.*, No. C 96-03606 CW, 1999 U.S. Dist. LEXIS 20059, at *1 (N.D. Cal. Sep. 14, 1999) (finding that the plaintiff
stated a claim for retaliation based upon a reduction in pay applied to the class members in a lawsuit made by the
employer in response to a lawsuit).

³ Plaintiff has not asserted, is not asserting, and does not intend to assert any claims under the Federal Labor
Standards Act or federal law; however there is no definition of regular rate under California law and the DLSE has
taken the position that the IWC adopted the same definition as in the FLSA. *See e.g., Huntington Mem'l Hosp. v. Sup.*
Ct., 131 Cal. App. 4th 893, 902 (2005) ("The DLSE routinely "takes the position that the failure of the [IWC] to

1 30. At all times relevant hereto during the COVID-19 pandemic, Plaintiff and the
2 aggrieved employees considered the Hazard Pay a regular and expected part of their continued
3 employment with Defendants. Moreover, “[u]nder [29 C.F.R.] § 778.224(a), a payment may not
4 be excluded from the regular rate of pay pursuant to § 207(e)(2) if it is generally understood as
5 compensation for work, even though the payment is not tied to specific hours worked by an
6 employee.” *Id.* (emphasis added).

7 31. At all times relevant hereto, Defendants regularly and consistently failed to include
8 Hazard Pay when calculating and paying Plaintiff and the aggrieved employees’ their earned
9 overtime wages. As such, when Plaintiff and the other aggrieved employees earned overtime
10 wages, Defendants failed to provide them with overtime compensation and one and one-half their
11 base rate and instead improperly only paid them one and one-half times their hourly base rate
12 resulting in an underpayment of overtime wages.

13 32. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
14 be violated...any provision regulating hours and days of work in any order of the Industrial
15 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
16 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
18 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
19 period for which the employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
21 employee.” For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil
22 penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages
23 through the PAGA cause of action

24
25 _____
(continued...)

26 define the term ‘regular rate’ indicates the Commission’s intent that in determining what payments are to be included
27 in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the
28 U.S.”); Division of Labor Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting “in not
defining the term ‘regular rate of pay’, the Industrial Welfare Commission has manifest its intent to adopt the
definition of regular rate of pay set out in the Fair Labor Standards Act.”).

1 33. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
2 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
3 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
4 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
6 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
7 period for which the employee is underpaid regardless of whether the initial violation is
8 intentionally committed. As set forth above, at all times relevant hereto, Defendant failed to
9 compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates.
10 Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved
11 employees are entitled to recover penalties for violations of Labor Code § 1197.1.

12 34. Labor Code § 512 states that “[a]n employer shall not employ an employee for a
13 work period of more than five hours per day without providing the employee with a meal period
14 of not less than 30 minutes,”

15 35. Moreover, pursuant to Labor Code § 512, an employer may not employ an
16 employee for a work period of more than ten (10) hours, without providing the employee with a
17 second meal period of not less than thirty (30) minutes. Moreover, the second meal period may
18 not be waived if the total hours worked is more than twelve (12) hours.

19 36. Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing]
20 any person for a work period of more than five (5) hours without a meal period of not less than 30
21 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to
22 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
23 workday that the meal period is not provided.

24 37. Labor Code § 226.7 provides “an employer shall not require an employee to work
25 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
26 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

27 38. At all times relevant hereto, Defendants failed to authorize and permit Plaintiff and
28 the other aggrieved employees to receive lawful meal periods, failed to advise them of their right

to such meal periods, failed to authorize and permit them to take timely meal periods, interrupted their meal periods, and actively interfered in Plaintiff and the other aggrieved employees' ability to take meal periods through their policy and practice of understaffing. This caused Plaintiff and the meal period aggrieved employees to regularly receive late first meal periods, if any, and forgo meal periods altogether during their employment with Defendants.

39. At all times relevant hereto, Defendants' meal period policies and practices disincentivized and discouraged Plaintiff and it often was not possible for Plaintiff and the other aggrieved employees to take meal periods and/or timely meal periods within the first five (5) hours of their shift. Notably, although Defendants' meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods. This includes, but is not limited to frequently interrupting Plaintiff and the other aggrieved employees' meal periods and labeling employees' lunches as a "Long Lun." if they take the full 30 minutes that they are entitled to under California law.

40. Based upon information and belief, Plaintiff and the other aggrieved employees' time records indicate that they regularly received late lunches; yet, the Company never once investigated and frequently failed to pay Plaintiff a meal period premium until after he submitted multiple complaints and was certainly aware that it was not providing timely meal period during the statutory period applicable to their claims:

Custom (Mon Jan-01 18 to Wed Nov-04 20)

Fri Aug-09 19	7:30a	12:11p	12:41p	5:00p	9:00	7:30a/ 4:00p	Left Late, Long Lun.
Fri Aug-09 19					8:00	REG1	
Fri Aug-09 19					1:00	OT1	
Sat Aug-10 19							
Sun Aug-11 19	7:00a	11:31a	12:01p	3:32p	8:00	7:00a/ 3:30p	Long Lun.
Sun Aug-11 19					8:00	REG1	
Mon Aug-12 19	7:30a	12:10p	12:40p	5:01p	9:00	7:30a/ 4:00p	Left Late, Long Lun.
Mon Aug-12 19					8:00	REG1	
Mon Aug-12 19					1:00	OT1	
Tue Aug-13 19	7:30a	12:02p	12:32p	6:01p	10:00	7:30a/ 4:00p	Left Late, Long Lun.
Tue Aug-13 19					8:00	REG1	
Tue Aug-13 19					2:00	OT1	
Wed Aug-14 19					8:00	PTO	
Thu Aug-15 19	7:00a	11:00a	11:30a	6:02p	10:30	7:00a/ 3:30p	Left Late, Long Lun.
Thu Aug-15 19					8:00	REG1	
Thu Aug-15 19					2:30	OT1	
Fri Aug-16 19							

1 41. Moreover, during the statutory period applicable to their claims, Deanco refused to
2 pay such penalties until after receiving multiple requests from Mr. Flores and now uses the pay
3 code “Mislnchpen” for some of these violations. However, even the payment of such premiums
4 would not excuse Deanco’s failure to comply with the Labor Code or absolve it of liability from
5 the PAGA claim. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020)
6 (“employers can pay an additional hour of wages as a remedy for failing to provide meal and rest
7 breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not
8 excuse a section 226.7 violation.’”) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th
9 1244, 1256 (2012)).

10 42. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
11 be violated...any provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
13 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
15 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
18 employee.” For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil
19 penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages
20 through the PAGA claim.

21 43. In addition, at all times relevant hereto, Plaintiff and the aggrieved employees
22 were not compensated with one (1) hours’ worth of pay at their regular rate of compensation
23 when they were not provided with a compliant meal period in violation of Labor Code § 226.7
24 and IWC Wage Order Nos. 5-2001 and 7-2001. Accordingly, for each day that Plaintiff did not
25 receive a compliant meal periods, he is entitled to receive meal period premiums pursuant to
26 Labor Code § 226.7 and IWC Wage Order No. 5-2001.

1 44. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
4 Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute
5 duty free rest periods for every major fraction of four hours worked.

6 45. At all times relevant hereto, Defendants failed to provide Plaintiff and all Rest
7 Period Aggrieved Employees with duty-free rest periods of not less than ten (10) minutes for
8 every major fraction of four (4) hours worked in violation of Labor Code § 226.7 and IWC Wage
9 Order No. 5-2001. Instead, Defendants regularly and consistently required Plaintiff and the other
10 aggrieved employees to work through and/or forgo rest periods due to their chronic understaffing
11 issues. Notably, although Defendants’ rest period policies and practices are not compliant, they
12 also pressured and coerced employees to forgo rest periods and made it difficult for employees to
13 take lawful duty-free rest periods both due to their understaffing policies and practices and
14 otherwise.

15 46. In addition to failing to authorize and permit compliant rest periods, Plaintiff and
16 the rest period aggrieved employees were not compensated with one (1) hours’ worth of pay at
17 their regular rate of compensation when they were not provided with a compliant rest period
18 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

19 47. Plaintiff, on behalf of himself as a current employee, also seeks injunctive relief,
20 restitution, and disgorgement of all benefits Defendants enjoyed from its unlawful conduct as
21 described herein pursuant to Business & Professions Code §§ 17200-17208.

22 48. At all times relevant hereto, Defendants also failed to provide accurate itemized
23 wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226
24 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
25 statement in writing showing:

- 26 (1) gross wages earned;
27 (2) total hours worked by the employee;
28 (3) the number of piece-rate units earned and any applicable piece rate if the
 employee is paid on a piece rate;

- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

49. Similarly, Labor Code § 226(e) provides:

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

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

50. During the statutory period applicable to their claims, Plaintiff contends that Defendants failed to include information about the total gross wages earned on his and the other aggrieved employees' itemized wage statements through the exclusion of the separate hazard pay. Simply put, it was not possible for Plaintiff or the aggrieved employees to determine their rates of pay and the number of hours worked at each applicable hourly rate in effect nor their total gross wages or net wages earned from their wage statement alone since it did not include the hazard pay:

DEANCO HEALTHCARE LLC
14850 ROSCOE BLVD
PANORAMA CITY CA, 91402-4618

Earnings Statement **ADP**

Period Beginning: 08/16/2020
Period Ending: 08/29/2020
Pay Date: 09/04/2020

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-XXXX

Earnings

	rate	hours	this period	year to date
Ot Prem Pa	7.9100	.50	3.96	1,102.63
Ott	15.8100	.50	7.91	1,955.43
Reg1	15.8100	80.00	1,264.80	21,619.71
Db Prem Pa				58.25
Db1				58.25
Hazard Pay				2,375.00
Holwkd				124.24
P.T.O.				248.48
Pto Cash				776.50
Ptoflex				403.78
Retro Pay				22.82
Gross Pay			\$1,276.67	26,745.09

Deductions

Statutory	
Federal Income Tax	115.59

Other Benefits and Information

	this period	total to date
Max Elig Comp	1,276.67	28,807.21
Totl Hrs Worked	80.50	
Pto Balance		185.58
Sick Available		0.00

Important Notes
COMPANY PHONE NUMBER (818)787-2222

51. For instance, as evidenced above for the pay period of August 16, 2020 to August 29, 2020, Plaintiff's wage statement incorrectly listed his gross pay as \$1,276.67 when it was actually \$1,501.67 (\$1,276.67 + \$225.00). Nor could Plaintiff ascertain from his wage statement alone his net pay nor the hourly rates in effect when including the hazard pay. Defendants engaged in such practices with respect to Plaintiff and all aggrieved employees.

52. Separate and independent from the foregoing, during the statutory period applicable to their claims, Plaintiff also alleges that when Defendants provided hazard pay to the extent it included alleged overtime pay with such pay, Plaintiff contends that Defendant failed to specify the amount of hours the employees worked and/or the hourly rates in effect on Plaintiff and the other aggrieved employees wages statements in *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1070 (N.D.Cal. 2019) (finding that an employer who identified the payments as a lump sum. and did "not specify how many hours the employee worked or the employee's hourly rate" applicable to such wages" even when making retroactive overtime payments and/or adjustments violated Labor Code section 226. For instance, for the pay period of December 6, 2020 to December 2019, 2020, Defendants failed to include any information about the amount of

1 hours associated with Mr. Flores' hazard pay as in *Magadia* and incorrectly advised him that his
2 total gross pay for the pay period was only \$225.00 and his net pay was \$189.56.

3 53. Moreover, due to Defendants' failure to pay Plaintiff and all aggrieved employees
4 all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage
5 statements issued by Defendants do not indicate the correct amount of gross wages earned, the
6 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
7 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants
8 violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved
9 employees.

10 54. Plaintiff and the aggrieved employees suffered legal "injury" for purposes of
11 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the
12 wage statements themselves the information required to be set forth by Section 226(a), the
13 information provided by Defendants was confusing and inaccurate, Plaintiff, and the aggrieved
14 employees were unable to determine from their wage statement alone the gross wages earned, the
15 net wages earned, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee for the reasons
17 discussed herein.

18 55. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
21 for each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As
23 explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees
24 with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved
25 employees may also recover Labor Code § 226.3 penalties under PAGA for Defendants'
26 violations of Labor Code § 226(a).

27 56. Labor Code § 1174 provides that each employer shall keep "payroll records
28 showing the hours worked daily by and the wages paid to...employees employed

1 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
2 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

3 57. During the statutory period applicable to their claims, Defendants failed to
4 maintain accurate records of the total hours worked by Plaintiff and the other aggrieved
5 employees or of the time associated with interrupted meal periods on a regular and consistent
6 basis. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

7 58. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
8 any employment are due and payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved
10 employees on a bi-weekly basis.

11 59. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all
12 minimum wages, overtime wages, meal period premiums, and rest period premiums, Defendants
13 failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days
14 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and
15 consistent basis.

16 60. Labor Code § 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
19 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
22 the faulty compensation policies and practices described in detail above and Defendant’s failure
23 to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period,
24 the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

25 61. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
28

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful.”

3 62. As discussed in detail above, during the statutory period applicable to their claims,
4 Plaintiff and the other aggrieved employees were regularly expected and required to use their cell
5 phones for work purposes including for communicating after hours. Plaintiff complained to
6 Defendants about the off-the-clock messages, yet to this date has never received any
7 reimbursement for his supervisor’s frequent off-the-clock communications to him about work
8 related issues, subjects, and tasks. Moreover, during the statutory period applicable to their
9 claims, it was expected and known that employees would incur expenses and be suffered or
10 permitted to expend time on reviewing and acting in accordance with the text messages sent to
11 Plaintiff and the other aggrieved employees. As such, Plaintiff and the other aggrieved employees
12 were required and/or expected to use their personal cell phones in the discharge of their job
13 duties.

14 63. Although Plaintiff and the other aggrieved employees were regularly required to
15 and/or required to use their cell phones in the discharge of their duties, Plaintiff and the other
16 aggrieved employees were not provided with any reimbursement for the use of their cell phones
17 in violation of California Labor Code § 2802. As such, Defendant violated Labor Code § 2802
18 with respect to Plaintiff and all aggrieved employees.

19 64. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
20 Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and
21 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
22 **Exh. A.** As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant
23 to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by
24 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar
25 days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and
26 proceed with a civil action pursuant to Labor Code § 2699.

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II.

JURISDICTION AND VENUE

65. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

66. This Court has personal jurisdiction over Defendant DEANCO HEALTHCARE, LLC because Defendant has caused injuries in the County of Los Angeles and State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code sections 17200, *et seq.*

67. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within Los Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and within the State of California and the County of Los Angeles.

III.

PARTIES

A. PLAINTIFF

68. Plaintiff RONALD FLORES is an employee of Defendants who at all times relevant hereto worked for Defendants in Los Angeles County.

69. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have been classified as employees by Defendants. Defendants hire employees to work in California.

70. Plaintiff represents the state of California in prosecuting claims against Defendants on behalf of several groups of employees defined as:

(1) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt, hourly employee for one or more pay periods from January 19, 2020 and continuing into the present. ("Aggrieved Employees")

(2) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt,

1 non-exempt hourly employee and who worked an evening or graveyard shift
2 commencing at 2:00 pm or later for one or more pay periods from January 19, 2020
3 and continuing into the present. (“Evening/Graveyard Shift Aggrieved Employees”).

4 (3) all individuals who were employed by Deanco Healthcare, LLC or its predecessor or
5 merged entities in California as a non-exempt, hourly employee or other similar
6 position and who worked a shift of more than eight (8) hours in a day and/or forty
7 (40) hours in a week during a pay period from January 19, 2020 and continuing into
8 the present. (“Overtime Aggrieved Employees”);

9 (4) all individuals who were employed by Deanco Healthcare, LLC or its predecessor,
10 merged or related entities for one or more pay periods in California as a non-exempt,
11 hourly employee and who worked a shift of more than eight (8) hours in a day and/or
12 forty (40) hours in a week during a period where the employee also earned non-
13 discretionary bonuses, incentive pay, and/or hazard pay from January 19, 2020 and
14 continuing into the present; (“Hazard Pay Overtime Aggrieved Employees”);

15 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the
16 “Overtime Aggrieved Employees.”

17 (5) all individuals who were employed by Deanco Healthcare, LLC or its predecessor,
18 merged or related entities in California who worked one or more shifts of more than
19 six (6) hours as a non-exempt hourly employee or other similar position from January
20 19, 2020 and continuing into the present. (“Meal Period Aggrieved Employees”);

21 (6) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor,
22 merged or related entities in California as a non-exempt hourly employee, or other
23 similar position, who worked one or more shifts of more than four (4) hours in length
24 or major fraction thereof from January 19, 2020 and continuing into the present.
25 (“Rest Period Aggrieved Employee”);

26 (7) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor,
27 merged or related entities in California and who submitted a record request pursuant
28 to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from January 19,
2020 and continuing into the present. (“Record Aggrieved Employee”);

(8) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor,
merged or related entities in California and who submitted a record request pursuant
to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from January 19,
2020 and continuing into the present. (“Evening Shift Aggrieved Employee”).

These groups may all collectively be referred to herein as aggrieved employees and/or all

1 aggrieved employees where appropriate.

2 **B. DEFENDANTS**

3 71. Defendant DEANCO HEALTHCARE, LLC., is a California limited liability
4 company, with a principal place of business of 8447 Wilshire Blvd., Ste. 202 Beverly Hills, CA
5 90211. Upon information and belief, Defendant employed Plaintiff and the aggrieved employees
6 within California and in Los Angeles County. Defendant has done and does business throughout
7 the State of California and in Los Angeles County.

8 72. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
10 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
11 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
12 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
13 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
14 capacities of the Defendants designated hereinafter as DOES when such identities become
15 known.

16 73. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
19 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
20 employer and/or joint employer, alter ego, or other person acting on behalf of an employer within
21 the meaning of the Labor Code and/or managing agent within the meaning of the Labor Code and
22 Civil Code.

23 **IV.**

24 **FIRST CAUSE OF ACTION**
25 **VIOLATIONS OF LABOR CODE § 226(f)**
26 **[Against all Defendants on behalf of Plaintiff]**

27 74. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous
28 paragraphs.

Section 226 of the Labor Code provides, in relevant part:

1 An employer who receives a written or oral request to inspect or copy records pursuant to
2 subdivision (b) pertaining to a current or former employee shall comply with the request
3 as soon as practicable, but no later than 21 calendar days from the date of the request.

4 75. Labor Code § 226 provides that a failure by an employer to permit a current or
5 former employee to inspect or receive a copy of records within the time set forth in subdivision
6 (c) entitles the current or former employee or the Labor Commissioner to recover a seven-
7 hundred-fifty-dollar (\$750) penalty from the employer.

8 76. Relatedly, Labor Code § 226(h) authorizes an employee to bring an action for
9 violation of Labor Code § 226 and to obtain injunctive relief and an award of costs and
10 reasonable attorney's fees.

11 77. On September 22, 2020, Plaintiff submitted a request for records under Labor
12 Code §§ 226, 432, and 1198.5 via USPS Certified Mail (Nos. 7019 0700 0001 5627 4911 and
13 7019 0700 0001 5627 4904) at its location in Panorama City, CA 91402 and at its location in
14 Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California
15 Secretary of State).

16 78. When responding to a records request, Labor Code § 226 obligates an employer to
17 provide either a duplicate of an employee's itemized wage statements or "a computer-generated
18 record that accurately shows all of the following information:

19 (1) gross wages earned, (2) total hours worked by the employee, except as provided in
20 subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if
21 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
22 made on written orders of the employee may be aggregated and shown as one item, (5) net
23 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of his or her social security number or
25 an employee identification number other than a social security number, (8) the name and
26 address of the legal entity that is the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
28 legal entity that secured the services of 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

29 79. Instead of providing the records that Plaintiff requested and as required by Labor
30 Code § 226, Defendant willfully, knowingly, and intentionally—failing to have a policy that
31 complies with Labor Code § 226 is sufficient to establish a knowing and intentional violation per
32 the plain language of the statute---violated Labor Code § 226(c) by providing documents that did

not include much of the information required by Labor Code § 226(a) including the number of hours that Plaintiff worked each pay period, the hourly rate in effect each pay period, the start date for the pay periods for which he was paid, the name and address of the legal entity that is the employer, provided conflicting information about the total amount of gross wages earned each pay date by omitting information about hazard pay. Based upon information and belief, Defendants engaged in such conduct for the explicit purpose of concealing the fact that it improperly failed to include hazard pay when calculating and paying overtime wages to Plaintiff and the other aggrieved employees identified in Plaintiff's PAGA Notice a copy of which is attached hereto as **Exhibit 1**.

80. Based upon information and belief, the USPS tracking records indicate that Deanco Healthcare, LLC received the record request on September 24, 2020 at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State). Pursuant to Labor Code §§ 226 and 1198.5, Plaintiff's pay records were due within 21 days of the receipt of his request (October 15, 2020) and his personnel records within 30 days of receipt (October 24, 2020).

81. Deanco did not respond at all to Plaintiff's record request until November 5, 2020—more than 30 days after receiving Plaintiff's request—as indicated by the excerpts from the Fedex envelope and the fact that many documents indicate that they were printed on November 4, 2020:

11/4/2020

ADP

Pay Summaries - Rollup Totals

Name Flores Nunfio, Ronald

	YEAR & WEEK	PAY DATE	PERIOD END DATE	GROSS	NET	CHECK / VOUCHER #	CO / FILE #
	2020 - 44 - 1	10/30/2020	10/24/2020	\$125.00	\$109.18	12907367	WD6/067433

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FedEx Express
Package US Airbill
Tracking Number: 8158 1821 2762

From:
Date: 11/5/20
Sender Name: Winston Law Group, P.C.
Phone: 918 787-2222
Company: MISSION COMMUNITY HOSPITAL
Address: 14330 ROCKY BLVD
City: PANORAMA CITY State: CA ZIP: 91402-6777

To:
Recipient Name: Winston Law Group, P.C.
Phone: 918 787-2222
Company: Winston Law Group, P.C.
Address: 1180 S Beverly Dr. Suite 300
City: Los Angeles State: CA ZIP: 90035

Service: Express Package Service
Next Business Day
FedEx First Overnight
FedEx Priority Overnight
FedEx Standard Overnight
FedEx 2Day A.M.
FedEx 2Day
FedEx Express Saver

Packaging: FedEx Envelope, FedEx Pak, FedEx Box, FedEx Tube, Other

Special Handling and Delivery Signature Options:
Saturday Delivery
No Signature Required
Direct Signature
Indirect Signature
Does this shipment contain dangerous goods?
Yes
No

Payment: Bill to: Sender, Recipient, Third Party

Labels: RT 929 ST 66, 6 D 16:30 2762 11.06, WZ BABA, FRI - 06 NOV AA STANDARD OVERNIGHT 90035 CA-US LAX

14 82. Deanco did not respond at all to Plaintiff's record request until November 5, 2020
15 as indicated by the excerpts from the Fedex envelope and the fact that many documents indicate
16 that they were printed on November 4, 2020:

17 83. Instead of providing the records that Plaintiff requested and as required by Labor
18 Code § 226, Defendant willfully, knowingly, and intentionally—failing to have a policy that
19 complies with Labor Code § 226 is sufficient to establish a knowing and intentional violation per
20 the plain language of the statute---violated Labor Code § 226(c) by providing documents that did
21 not include much of the information required by Labor Code § 226(a) including the number of
22 hours that Plaintiff worked each pay period, the hourly rate in effect each pay period, the start
23 date for the pay periods for which he was paid, the name and address of the legal entity that is the
24 employer, provided conflicting information about the total amount of gross wages earned each
25 pay date by omitting information about hazard pay. Based upon information and belief,
26 Defendants engaged in such conduct for the explicit purpose of concealing the fact that it
27 improperly failed to include hazard pay when calculating and paying overtime wages.

84. Plaintiff sent Defendant a follow-up letter on December 11, 2020 requesting that it provide Plaintiff's pay records within the meaning of Labor Code § 226(a) and (c) and the penalties for failing to timely produce his records. Plaintiff requested that Defendant provide such records by December 31, 2020, but Defendant consciously elected to continue to violate Labor Code §§ 226(a), (c), (f) and 1198.5(k) by refusing to provide the records and penalties. Plaintiff alleges that Defendant engaged in the same or similar conduct with respect the other Record Aggrieved Employee in an effort to conceal its unlawful practices, to avoid complying with California's record request laws, and/or as part of a regular and consistent policy and practice.

85. Defendants violated Labor Code section 226 by not providing Plaintiff with a copy of the requested records within 21 days.

86. Pursuant to Labor Code § 226(f) Plaintiff is entitled to collect a Seven Hundred and Fifty dollars (\$750) penalty and an award of costs and reasonable attorney's fees to enforce this provision, in a sum to be proven at trial.

V.

SECOND CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 1198.5(k) AND
INJUNCTIVE RELIEF PURSUANT TO LABOR CODE § 1198.5(l)
[Against all Defendants on behalf of Plaintiff]

87. Plaintiff realleges and incorporates by reference all previous paragraphs.

88. Section 1198.5 of the Labor Code specifically authorizes, in relevant part:

Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

89. Labor Code § 1198.5(k) further provides that if an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

90. Labor Code § 1198.5(l) also entitles a current and/or former employee to bring an action for injunctive relief and to recover costs and reasonable attorney's fees in such an action.

91. On September 22, 2020, Plaintiff submitted a request for records under Labor Code §§ 226, 432, and 1198.5 via USPS Certified Mail (Nos. 7019 0700 0001 5627 4911 and 7019 0700 0001 5627 4904) at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State).

92. Based upon information and belief, the USPS tracking records indicate that Deanco Healthcare, LLC received the record request on September 24, 2020 at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State). Pursuant to Labor Code §§ 226 and 1198.5, Plaintiff's pay records were due within 21 days of the receipt of his request (October 15, 2020) and his personnel records within 30 days of receipt (October 24, 2020).

93. Pursuant to Labor Code § 1198.5, Plaintiff is entitled to collect a Seven Hundred and Fifty dollars (\$750) penalty, the production of his personnel records within the meaning of Labor Code § 1198.5 and an award of costs and reasonable attorney's fees to enforce this provision, in a sum to be proven at trial.

VI.
THIRD CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§
1194, 1194.2 AND IWC WAGE ORDER NO. 5-2001
[Against All Defendants by Plaintiff]

94. Plaintiff, on behalf of himself, re-alleges and incorporates by reference all previous paragraphs.

95. Section 1194 of the Labor Code provides, in relevant part:

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

96. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount

1 equal to the wages unlawfully unpaid and interest thereon.

2 97. As set forth in detail above, during the statutory period applicable to Plaintiff's
3 claim, Plaintiff was not compensated for all hours worked.

4 98. In failing to pay Plaintiff for all hours worked, maintaining a uniform and common
5 written and oral policy of requiring Plaintiff to perform work for which he did not receive
6 compensation and continuing to fail to provide Plaintiff with compensation for all hours worked
7 despite receiving a written complaint from Plaintiff and in failing to seek legal counsel on the
8 issue⁴, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith.
9 Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff is
10 entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or
11 liquidated damages in an additional amount equal to the total amount of wages unlawfully
12 withheld during the statutory period applicable to this Action.

13 **VII.**
14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**
16 **LABOR CODE §§ 510, 1194, and 1199**
17 **[Against All Defendants by Plaintiff]**

18 99. Plaintiff, on behalf of himself, re-alleges and incorporates by reference all previous
19 paragraphs.

20 100. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
21 employees at the rate of no less than one and one-half times the regular rate of pay for any work
22 in excess of eight hours in one workday and any work in excess of 40 hours in any one
23 workweek.

24 101. As discussed in detail above, Plaintiff was forced to work on a regular and
25 consistent basis without receiving compensation for all hours worked and at the proper rate.
26 Specifically, Plaintiff was routinely deprived of any compensation whatsoever for overtime hours

27 ⁴ *Flores v. City of San Gabriel* 824 F.3d 890, 905 (9th Cir. 2016) (holding that the employer's conduct was willful
28 meriting the imposition of liquidated damages because no evidence existed that the defendant sought legal advice on
the issue); *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 920 (9th Cir. 2003) (upholding an award of liquidated
damages where the employer believed that it was not required to pay overtime because employees divided their hours
between two legal entities that were operated together, but had failed to consult an objective authority or seek advice
on the legality of its position).

1 worked and/or paid at a rate less than one and one-half times his regular rate in violation of Labor
2 Code § 510.

3 102. By their common policy of requiring Plaintiffs to work in excess of eight (8) hours
4 in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
5 one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of Labor
6 Code §§ 510, 1194 and 1199.

7 103. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
8 wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such
9 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

10 **VIII.**

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE** 13 **§§ 226.7 and 512; IWC WAGE ORDER NO. 5-2001, § 11** 14 **[Against All Defendants by Plaintiff]**

15 104. Plaintiffs, on behalf of himself and realleges and incorporates by reference all
16 previous paragraphs and allegations described in detail above;

17 105. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
18 compensation for each non-compliant meal period an employer fails to provide. Employees are
19 entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be
20 provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30)
21 minutes for shifts over ten (10) hours. Moreover, pursuant to Labor Code § 512, an employer may
22 not employ an employee for a work period of more than ten (10) hours, without providing the
23 employee with a second meal period of not less than thirty (30) minutes. In addition, the second
24 meal period may not be waived if the total hours worked is more than twelve (12) hours.

25 106. Plaintiff consistently worked shifts over six (6) hours and eight (8) hours a day and
26 also worked in excess of ten (10) hours per day, but did not receive timely, uninterrupted, and/or
27 otherwise compliant meal periods during the statutory period applicable to his claims.
28

107. In addition, Plaintiff did not receive a second thirty (30) minute meal period when working shifts in excess of ten (10) hours in a day during the statutory period applicable to their claims.

108. During the statutory period applicable to their claims, Plaintiff often was not compensated with one (1) hours' worth of pay at their regular rate of compensation when he were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

109. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal to one (1) hour of wages per non-compliant meal period, per day in a sum to be proven at trial.

IX.
SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER 5-2001, § 12
[Against All Defendants by Plaintiff]

110. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous paragraphs.

111. Based upon information and belief, Plaintiff consistently worked shifts more than four (4) hours or a major fraction thereof, including shifts in excess of six (6) hours in a day, but less than eight (8) hours, shifts in excess of eight (8) hours per day, and shifts of more than ten (10) hours in a day without receiving rest periods and/or the proper amount of rest periods during the statutory period applicable to their claims.

112. Labor Code § 226.7 provides “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 (“IWC”). Under IWC Wage Order No. 5-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

113. Labor Code § 226.7 provides “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 (“IWC”). Under IWC Wage

1 Order No. 5-2001 an employer must authorize and permit all employees to take ten (10) minute
2 duty free rest periods for every major fraction of four hours worked.

3 114. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 7-2001, Defendants
4 failed to authorize and permit Plaintiff to receive duty-free rest periods of not less than ten (10)
5 minutes for every major fraction of four (4) hours worked for the reasons discussed above.

6 115. Defendants also failed to advise Plaintiff of his right to receive a second ten (10)
7 minute rest period when they worked a shift in excess of six (6) hours, but less than eight (8)
8 hours as well as their right to receive a third ten (10) minute rest period for every shift worked in
9 excess of ten (10) hours. Defendants also regularly and consistently failed to authorize and permit
10 employees to take a second net ten (10) minute duty-free rest period when working shifts in
11 excess of six (6) hours, but less than eight (8) hours. Defendants also failed to authorize and
12 permit Plaintiff of his right to receive a third ten (10) minute rest period for every shift worked in
13 excess of ten (10) hours.

14 116. Moreover, as a result of its understaffing practices and policies with respect to
15 employees, it was not possible for Plaintiff to take rest periods. Notably, although Defendants'
16 rest period policies and practices are not compliant, they also pressured and coerced employees to
17 forgo rest periods and made it difficult for employees to take lawful duty-free rest periods.

18 117. In addition to failing to authorize and permit compliant rest periods, Plaintiff was
19 not compensated with one (1) hours' worth of pay at their regular rate of compensation when they
20 were not provided with a compliant rest period and/or their rest period was interrupted in
21 accordance with Labor Code § 226.7(b).

22 118. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages in an amount
23 equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

24 **X.**
SEVENTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff]

26 119. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous
27 paragraphs.
28

120. From at least one (1) year prior to the filing of this Complaint through the present, Defendants knowingly and intentionally failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

121. Similarly, Labor Code § 226(e) provides:

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

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

122. During the statutory period applicable to their claims, Plaintiff contends that Defendants failed to include information about the total gross wages earned on his and the other aggrieved employees' itemized wage statements through the exclusion of the separate hazard pay. Simply put, it was not possible for Plaintiff to determine their rates of pay and the number of hours worked at each applicable hourly rate in effect nor their total gross wages or net wages earned from their wage statement alone since it did not include the hazard pay:

DEANCO HEALTHCARE LLC
14850 ROSCOE BLVD
PANORAMA CITY CA, 91402-4618

Earnings Statement 

Period Beginning: 08/16/2020
Period Ending: 08/29/2020
Pay Date: 09/04/2020

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-XXXX

RONALD FLORES NUNFIO

Earnings	rate	hours	this period	year to date
Ot Prem Pa	7.9100	.50	3.96	1,102.63
Ot1	15.8100	.50	7.91	1,955.43
Reg1	15.8100	80.00	1,264.80	21,619.71
Db Prem Pa				58.25
Db1				58.25
Hazard Pay				2,375.00
Holwkd				124.24
P.T.O.				248.48
Pto Cash				776.50
Ptoflex				403.78
Retro Pay				22.82
Gross Pay			\$1,276.67	28,745.09

* Excluded from federal taxable wages
Your federal taxable wages this period are
\$1,181.07

Other Benefits and Information	this period	total to date
Max EligComp	1,276.67	28,807.21
Totl Hrs Worked	80.50	
Pto Balance		185.58
Sick Available		0.00

Deductions
Statutory
Federal Income Tax

Important Notes
COMPANY PHONE NUMBER (818)787-2222

	2020 - 36 - 1	09/04/2020	08/29/2020	\$225.00	\$189.56	12569299	WD6/067433
	2020 - 36 - 1	09/04/2020	08/29/2020	\$1,276.67	\$0.00	00360361	WD6/067433

123. For instance, as evidenced above for the pay period of August 16, 2020 to August 29, 2020, Plaintiff's wage statement incorrectly listed his gross pay as \$1,276.67 when it was actually \$1,501.67 (\$1,276.67 + \$225.00). Nor could Plaintiff ascertain from his wage statement alone his net pay nor the hourly rates in effect when including the hazard pay. Defendants engaged in such practices with respect to Plaintiff and all aggrieved employees.

124. Separate and independent from the foregoing, during the statutory period applicable to their claims, Plaintiff also alleges that when Defendants provided hazard pay to the

1 extent it included alleged overtime pay with such pay, Plaintiff contends that Defendant failed to
2 specify the amount of hours the employees worked and/or the hourly rates in effect on Plaintiff
3 and the other aggrieved employees wages statements in *Magadia v. Wal-Mart Assocs.*, 384 F.
4 Supp. 3d 1058, 1070 (N.D.Cal. 2019) (finding that an employer who identified the payments as a
5 lump sum. and did “not specify how many hours the employee worked or the employee’s hourly
6 rate” applicable to such wages” even when making retroactive overtime payments and/or
7 adjustments violated Labor Code section 226. For instance, for the pay period of December 6,
8 2020 to December 2019, 2020, Defendants failed to include any information about the amount of
9 hours associated with Mr. Flores’ hazard pay as in *Magadia* and incorrectly advised him that his
10 total gross pay for the pay period was only \$225.00 and his net pay was \$189.56.

11 125. Moreover, due to Defendants’ failure to pay Plaintiff all minimum wages,
12 overtime wages, meal period premiums, and rest period premiums, the wage statements issued by
13 Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the
14 net wages earned, all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate. Thus, Defendants violated Labor Code §226(a)(1),
16 (2), (5), and (9) with respect to Plaintiff.

17 126. Plaintiff suffered legal “injury” for purposes of Labor Code section 226(e) insofar
18 as they were unable to readily and easily determine from the wage statements themselves the
19 information required to be set forth by Section 226(a), the information provided by Defendants
20 was confusing and inaccurate, Plaintiff, and the aggrieved employees were unable to determine
21 from their wage statement alone the gross wages earned, the net wages earned, and all applicable
22 hourly rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee for the reasons discussed herein.

24 127. Pursuant to Labor Code § 226(e)(1) Plaintiff is is entitled to recover the greater of
25 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
26 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
27 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs
28 and reasonable attorney’s fees.

1 **XI.**

2 **EIGHTH CAUSE OF ACTION**
3 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
4 **(LABOR CODE § 2802)**

5 **[Against all Defendants on behalf of Plaintiff]**

6 128. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous
7 paragraphs.

8 129. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties.”

11 130. As discussed in detail above, during the statutory period applicable to their claims,
12 in order to discharge his duties, Plaintiff was regularly expected and required to use his cell
13 phones for work purposes including for communicating after hours. Plaintiff complained to
14 Defendants about the off-the-clock messages, yet to this date has never received any
15 reimbursement for his supervisor’s frequent off-the-clock communications to him about work
16 related issues, subjects, and tasks.

17 131. Moreover, during the statutory period applicable to their claims, it was expected
18 and known that employees would incur expenses and be suffered or permitted to expend time on
19 reviewing and acting in accordance with the text messages sent to Plaintiff. As such, Plaintiff and
20 the other aggrieved employees were required and/or expected to use their personal cell phones in
21 the discharge of their job duties.

22 132. However, although having knowledge of such usage and receiving at least one
23 complaint about it, Defendants did not reimburse Plaintiff for the costs/expenses necessarily
24 incurred in the discharge of his duties during the statutory period applicable to his claims.

25 133. Defendants failure to pay for or reimburse the work-related business expenses of
26 Plaintiff violated non-waivable rights secured to Plaintiff by Labor Code §2802. See Labor Code
27 § 2804. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and
28 attorneys’ fees and costs, under Labor Code § 2802.

///

XII.
NINTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff]

134. Plaintiff, on behalf of himself and the general public, realleges and incorporates by reference all previous paragraphs.

135. Plaintiff, on behalf of himself and the general public brings this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

136. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California and the United States of America As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California’s Labor Code.

137. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

138. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200 et seq. of the Business & Professions Code.

139. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200 et seq. of the Business & Professions Code.

140. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, others similarly situated, other businesses, and the general public have been damaged in a sum as may be proven.

141. As part of his claim against Defendants, Plaintiffs seeks not only the unpaid wages and meal/rest period premiums, but also the market value of the loss of the statutory protections and the cost to other employers of providing proper breaks, reimbursement/tools, wage statements, and wages for all hours worked and at the proper amounts. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

142. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and the general public of the money Defendants have unlawfully failed to pay.

XIII.

TENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 204, 210, 226(a) and (c), 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage Order No. 5-2001**

143. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

144. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 204, 210, 226(a) and (c), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage Order No. 5-2001.

145. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of

trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

146. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get separate PAGA penalties for interrupted meal periods because interrupted meal periods violated Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Magadia vs. Wal-Mart*, No. 17-CV-00062-LHK, 2019 U.S. Dist. LEXIS 91792 (N.D. Cal. May 31, 2019) (awarding three sets of PAGA penalties including several during the same pay period); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations.”); *accord Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

147. In addition, Plaintiff and the aggrieved employees seek the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred

1 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
2 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
3 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
4 of Section 226.”

5 148. Labor Code § 210 provides that “in addition to, an entirely independent and apart
6 from, any other penalty provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
8 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

11 149. As a result of the faulty compensation policies and practices described in detail
12 above, the State of California is entitled to recover penalties under Labor Code § 210 through
13 PAGA.

14 150. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
15 causes to be violated...any provision regulating hours and days of work in any order of the
16 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
17 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
18 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
19 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
20 period for which the employee was underpaid...” Based upon the above factual allegations
21 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
22 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
23 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For penalties pursuant to Labor Code section 226 in the amount of Seven Hundred and Fifty Dollars (\$750) and an award of attorneys' fees related to the enforcement of this provision;

2. An order enjoining Defendants and its agents, servants, and employees, and all persons acting under, in concert with, or for it requiring Defendant to provide Plaintiff with copies of his pay records within the meaning of Labor Code § 226(a), (b), (c), and (f);

3. For penalties pursuant to Labor Code section 1198.5 in the amount of Seven Hundred and Fifty Dollars (\$750) and an award of attorneys' fees related to the enforcement of this provision;

4. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with access to records that he is permitted to inspect under Labor Code § 1198.5;

5. An order enjoining and directing Defendants and its agents, servants, and employees to provide Plaintiff with and/or the right to inspect his personnel files within the meaning of Labor Code § 1198.5;

6. For compensatory damages in the amount of unpaid wages not paid to Plaintiff and from four (4) years prior to the filing of the Complaint and continuing into the present as may be proven;

7. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff from four (4) years prior to the filing of the Complaint and continuing into the present as may be proven;

8. For compensatory damages in the amount of Plaintiff's unpaid meal period premiums from at least four (4) years prior to the filing of this action to the present as may be proven;

1 9. For compensatory damages in the amount of Plaintiff's unpaid rest period
2 premiums from at least four (4) years prior to the filing of this action to the present as may be
3 proven;

4 10. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
5 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
6 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
8 wage statements issued from one (1) year prior to the filing of this Complaint and continuing into
9 through the present;

10 11. For reimbursement of expenses pursuant to Labor Code § 2802 (a)-(c), for all the
11 unreimbursed expenses incurred by Plaintiff plus interest and attorneys' fees;

12 12. An award of prejudgment and post judgment interest;

13 13. An order enjoining Defendant and its agents, servants, and employees, and all
14 persons acting under, in concert with, or for it from providing Plaintiff proper compensation for
15 all hours worked and all hours reported, from refusing to pay minimum wages, overtime wages,
16 meal period premiums, rest period premiums, from failing to provide timely first meal periods
17 within the first five (5) hours of an employees shift and second meal periods when employees
18 work more than ten (10) hours in a day, from failing to authorize and permit employees to receive
19 a second ten (10) minute rest period when they worked a shift in excess of six (6) hours, but less
20 than eight (8) hours as well as their right to receive a third ten (10) minute rest period for every
21 shift worked in excess of ten (10) hours, to provide all tools and implements needed by
22 employees to discharge their job duties, and to provide accurate itemized wage statements
23 pursuant to Labor Code § 226(a), and to provide all records it is required to produce in a timely
24 manner in response to requests received under Labor Code §§ 226 and 1198.5;

25 14. For restitution for unfair competition pursuant to Business & Professions Code
26 § 17200, including disgorgement or profits, in an amount as may be proven;

27 15. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
28 employees because of Defendants' violation of Labor Code §§ 204, 210, 226(a) and (c), 226.3,

1 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage
2 Order No. 5-2001

3 16. An award of attorneys' fees; and

4 17. An award providing for payment of costs of suit;

5 18. Such other and further relief as this Court may deem proper and just.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a trial of his claims by jury for causes of action 1-8, but not
8 claims 9-10 for which a bench trial is required.

9
10 DATED: January 19, 2021

WINSTON LAW GROUP, P.C.

11 By: David Winston
12 DAVID S. WINSTON
13 Attorney for Plaintiff
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Exhibit 1

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 320 • LOS ANGELES, CA 90035 • (424) 288-4568

January 19, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendant

Deanco Healthcare, LLC
8447 Wilshire Blvd., Ste. 202
Beverly Hills, CA 90211

Deanco Healthcare, LLC
14850 Roscoe Blvd
Panorama City, CA 91402

Mr. Craig Garner as Agent for Service
13274 Fiji Way, Suite 250
Marina Del Rey, CA 90292

Re: *RONALD FLORES NUNFIO VS. DEANCO HEALTHCARE, LLC - California Labor Code § 2699 Penalties*

Gentlepersons:

This firm represents Ronald Flores Nunfio (“Plaintiff” or “Mr. Flores”) and a proposed group of current and former employees working for Deanco Healthcare, LLC and/or any businesses or entities doing business as Mission Community Hospital (“Defendants” or “Deanco”) in California for violations of California Labor Code §§ 204, 210, 226(a) and (c), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC Wage Order No. 5-2001.

Mr. Flores wishes to bring a representative action on behalf of the State of California based upon alleged improper acts committed against her and several groups of aggrieved employees defined as:

- (1) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt, hourly employee for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present.
- (2) all individuals who were employed by Deanco Healthcare, LLC as a non-exempt, non-exempt hourly employee and who worked an evening or graveyard shift commencing at 2:00 pm or later for one or more pay periods from one (1) year prior to the date of this letter and continuing into the present. (“Evening/Graveyard Shift

Aggrieved Employees).

- (3) all individuals who were employed by Deanco Healthcare, LLC or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from one (1) year prior to the date of this letter and continuing into the present. (“Overtime Aggrieved Employees”);
- (4) all individuals who were employed by Deanco Healthcare, LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where the employee also earned non-discretionary bonuses, incentive pay, and/or hazard pay from one (1) year prior to the submission of this letter and continuing into the present; (“Hazard Pay Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Overtime Aggrieved Employees.”

- (5) all individuals who were employed by Deanco Healthcare, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or other similar position from one (1) year prior to the date of this letter and continuing into the present. (“Meal Period Aggrieved Employees”);
- (6) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from one year prior to the date of this letter and continuing into the present. (“Rest Period Aggrieved Employee”);
- (7) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California and who submitted a record request pursuant to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from one (1) year prior to the date of this letter and continuing into the present. (“Record Aggrieved Employee”);
- (8) all individuals who were employed by Deanco Healthcare, LLC, or its predecessor, merged or related entities in California and who submitted a record request pursuant to Labor Code §§ 226 and/or 1198.5 to Deanco Healthcare, LLC from one (1) year prior to

the date of this letter and continuing into the present. (“Evening Shift Aggrieved Employee”);

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.¹

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(c) and 1198.5

Labor Code § 1198.5(a) provides that “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Pursuant to Labor Code § 1198.5(b) requires the employer to “make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request.” “If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

Similarly, an employee may request a copy of their pay records within the meaning of Labor Code § 226(a) in accordance with Labor Code § 226(c). Under Labor Code § 226(c), “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” Pursuant to Labor Code § 226(f) if an employer fails to comply with a request pursuant to Labor Code § 226(f), the employer must pay the employee a penalty of seven hundred fifty dollars.

When responding to a records request, Labor Code § 226 obligates an employer to provide either a duplicate of an employee’s itemized wage statements or “a computer-generated record that accurately shows all of the following information:

¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int’l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

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(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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

On September 22, 2020, Plaintiff submitted a request for records under Labor Code §§ 226, 432, and 1198.5 via USPS Certified Mail (Nos. 7019 0700 0001 5627 4911 and 7019 0700 0001 5627 4904) at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State).

The USPS tracking records indicate that Deanco Healthcare, LLC received the record request on September 24, 2020 at its location in Panorama City, CA 91402 and at its location in Beverly Hills, CA 90211 (it's legal entity and mailing address per its filings with the California Secretary of State). Pursuant to Labor Code §§ 226 and 1198.5, Plaintiff's pay records were due within 21 days of the receipt of his request (October 15, 2020) and his personnel records within 30 days of receipt (October 24, 2020).

Deanco did not respond at all to Plaintiff's record request until November 5, 2020 as indicated by the excerpts from the Fedex envelope and the fact that many documents indicate that they were printed on November 4, 2020:

[illegible]

11/4/2020

ADP

Pay Summaries - Rollup Totals

Name Flores Nunfio, Ronald

	YEAR & WEEK	PAY DATE	PERIOD END DATE	GROSS	NET	CHECK / VOUCHER #	CO / FILE #
	2020 - 44 - 1	10/30/2020	10/24/2020	\$125.00	\$109.18	12907367	WD6/067433

Instead of providing the records that Plaintiff requested and as required by Labor Code § 226, Defendant willfully, knowingly, and intentionally—failing to have a policy that complies with Labor Code § 226 is sufficient to establish a knowing and intentional violation per the plain language of the statute---violated Labor Code § 226(c) by providing documents that did not include much of the information required by Labor Code § 226(a) including the number of hours that Plaintiff worked each pay period, the hourly rate in effect each pay period, the start date for the pay periods for which he was paid, the name and address of the legal entity that is the employer, provided conflicting information about the total amount of gross wages earned each pay date by omitting information about hazard pay. Based upon information and belief, Defendants engaged in such conduct for the explicit purpose of concealing the fact that it improperly failed to include hazard pay when calculating and paying overtime wages.

Plaintiff sent Defendant a follow-up letter on December 11, 2020 requesting that it provide Plaintiff's pay records within the meaning of Labor Code § 226(a) and (c) and the penalties for failing to timely produce his records. Plaintiff requested that Defendant provide such records by December 31, 2020, but Defendant consciously elected to continue to violate Labor Code §§ 226(a), (c), (f) and 1198.5(k) by refusing to provide the records and penalties

Plaintiff alleges that Defendant engaged in the same or similar conduct with respect the other Record Aggrieved Employee in an effort to conceal its unlawful practices, to avoid complying with California's record request laws, and/or as part of a regular and consistent policy and practice. As a result of the foregoing and notwithstanding the fact that Plaintiff also experienced many of the other Labor Code violations addressed herein, Plaintiff is an aggrieved employee under PAGA and possesses standing to pursue claims against Deanco Healthcare, LLC for the claims identified in this notice. *See Huff vs. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745 (2018) (explaining that there is no typicality requirement in a PAGA action because "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.") (emphasis added).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1 and IWC WAGE ORDER No. 5-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 5-2001 obligates employers to pay each employee minimum wages for all hours worked.

These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

Defendant required Plaintiff and all aggrieved employees to regularly perform work-off-the-clock for which they did not receive any compensation including, but not limited to, during meal periods and when they called them on their personal cell phones. Throughout his employment with Deanco, Deanco has failed to pay Mr. Flores for all hours worked including minimum wages for overtime hours, overtime wages, and for the time associated with interrupted meal periods. Mr. Flores has previously reported in August 2020 that he was being contacted while off-the-clock on his personal cell phone in and not receiving compensation for all hours worked in violation of Labor Code §§ 1194 and 2802. This includes complaining about his supervisor texting him assignments and questions about work while he was off-the-clock on his phone. There are also several instances where he worked more than eight (8) hours in a day, but was not paid either minimum wages or at his overtime rate for such hours. Instead, Mr. Flores was only paid eight (8) hours of work on these occasions.

In addition, Mr. Flores’ meal periods are interrupted approximately 3-4 times per week. In addition to entitling Mr. Flores to meal period premiums, Mr. Flores is also entitled to compensation for the amount of time he was required to perform work during his meal periods. *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods.).

Plaintiff contends that Defendant regularly engaged in the same conduct detailed above with respect to not just him, but all aggrieved employees. In other words, Plaintiff contends that Defendant also interrupted the other aggrieved employees’ meal periods, called/texted them at

home, and required them to work while off-the-clock without providing any compensation for such time in violation of Labor Code §§ 1194 and 1197.

As a result of Defendants' policy and practices described above, Defendants regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code §§ 1194 and 1197. Accordingly, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants have violated Labor Code §§ 1194 and 1197 with respect to Plaintiff and the aggrieved employees.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 510, 558, 1197, and 1198 AND WAGE ORDER NO. 5-2001

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

Similarly, Labor Code § 1198 provides that "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."

As discussed in detail above, Plaintiff failed to pay Plaintiff and the other aggrieved employees for all hours worked. In many such instances Plaintiff and the Overtime Aggrieved employees had already worked more than eight (8) hours in a day and/or forty (40) hours in a week when Defendants forced them to work-off-the-clock and/or Defendant failed to include such time when determining Plaintiff and the aggrieved employees' eligibility for overtime and calculating and paying their wages. For instances, there were numerous occasions where Mr. Flores had already worked more than eight (8) hours in a day, but was not paid either minimum wages or at his overtime rate for such hours. Instead, Mr. Flores was only paid eight (8) hours of work on these occasions.

Since many of the hours Plaintiff and the other aggrieved employees did not receive compensation for whatsoever were hours worked in excess of eight (8) hours in a day and/or forty (40) hours in a week, Plaintiff and the aggrieved employees were not paid for all hours worked. In addition, as Defendant failed to include all hours worked when determining whether or not Plaintiff and the aggrieved employees worked more than eight (8) hours in a day and/or forty (40) hours in a week, Defendant regularly and consistently misclassified overtime hours as regular hours. Due to these unlawful policies and practices, Defendant failed to pay Plaintiff and all aggrieved employees wages at the rate of one-and-one half their regular rate of pay in violation of Labor Code §§ 510, 1194.2, 1197, and 1198.

Separate and independent of the off-the-clock time, Defendant also regularly and consistently failed to include incentive pay and other regular expected compensation when calculating and paying Plaintiff and the aggrieved employees' overtime wages. When calculating an employee's regular rate, California and federal courts, with limited exceptions, look to the federal Fair Labor Standards Act ("FLSA"). *Huntington Mem'l Hosp. v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005).²³ Under the FLSA, the regular rate of pay includes all forms of remuneration. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding that shift differential must be included in the regular rate when calculating and paying overtime).

"Under [29 C.F.R.] § 778.224(a), a payment may not be excluded from the regular rate of pay pursuant to § 207(e)(2) if it is generally understood as compensation for work, even though the payment is not tied to specific hours worked by an employee." *Id.* (emphasis added). The Ninth Circuit recently summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) that

2 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1129 (C.D. Cal. 2011) (using FLSA standards to determine the regular rate of pay in a Cal. Labor Code § 510 overtime claim); *Advanced—Tech Sec. Servs., Inc. v. Sup. Ct.*, 163 Cal. App. 4th 700, 707 (2008). The DLSE routinely "takes the position that the failure of the [IWC] to define the term 'regular rate' indicates the Commission's intent that in determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S." (*Huntington Mem'l*, *supra*, 131 Cal. App. 4th at p. 902-903; *Advanced—Tech*, *supra*, 163 Cal.App.4th at p. 707; *see also*, Division of Labor Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting "in not defining the term 'regular rate of pay', the Industrial Welfare Commission has manifest its intent to adopt the definition of regular rate of pay set out in the Fair Labor Standards Act."].) In addition, numerous DLSE opinion letters take the position California will adhere to the standards adopted by the U.S. Dept. of Labor when determining an employee's regular rate. (*See also*, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Jan. 29, 2003) pp. 2, fn. 1, 3, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay in Cases Involving Piece Rate (Feb. 22, 1993) p. 2 & fn. 2; Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Explicit Wage Agreements (Jan 29, 1992) p. 1, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Mar. 6, 1991) p. 1.)

3 *Cf. Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 568 (2018) (explaining that for the purposes of calculating the per hour value of an employer's flat sum attendance bonuses that California, unlike the FLSA, uses the non-overtime hours worked during the pay period as the divisor instead of all hours worked during the pay period).

“the question of whether a particular payment falls within the ‘other similar payments’ clause does not turn on whether the payment is tied to an hourly wage, but instead turns on whether the payment is a form of compensation for performing work.” *Id.* Nor as the Ninth Circuit explained need compensation paid be measured by the number of hours worked. *Id.* (explaining “that the key point is whether payment is ‘compensation for work’” and that “even if payments to employees are not measured by the number of hours spent at work, that fact does not qualify for them for exclusion under section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers Union of America v. Southern California Edison, Co.*, 83 F.3d 295.

Here, Defendant provides and Plaintiff and the other aggrieved employees understood COVID-19 pay to be a regular part of their compensation during the COVID-19 pandemic. Defendant sometimes refers to such compensation as Hazard Pay. For instance, for the pay period of August 16-29, 2020, Plaintiff received \$225.00 in Hazard Pay,⁴ but as indicated in the excerpt from Plaintiff’s wage statement below, Defendant failed to include the Hazard Pay when calculating and paying overtime wages:

	2020 - 36 - 1	09/04/2020	08/29/2020	\$225.00	\$189.56	12569299	WD6/067433
	2020 - 36 - 1	09/04/2020	08/29/2020	\$1,276.67	\$0.00	00360361	WD6/067433

DEANCO HEALTHCARE LLC
14850 ROSCOE BLVD
PANORAMA CITY CA, 91402-4618

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-XXXX

Earnings Statement

Period Beginning: 08/16/2020
Period Ending: 08/29/2020
Pay Date: 09/04/2020

RONALD FLORES NUNFIO

Earnings	rate	hours	this period	year to date
Ot Prem Pa	7.9100	.50	3.96	1,102.63
Ot1	15.8100	.50	7.91	1,955.43
Reg1	15.8100	80.00	1,264.80	21,619.71
Db Prem Pa				56.25
Db1				58.25
Hazard Pay				2,375.00
Holwkd				124.24
P.T.O.				248.48
Pto Cash				776.50
Ptoflex				403.78
Retro Pay				22.82
Gross Pay			\$1,276.67	28,745.09

Deductions

Statutory

Federal Income Tax

*** Excluded from federal taxable wages**

Your federal taxable wages this period are \$1,181.07

Other Benefits and Information

Information	this period	total to date
Max Elig/Comp	1,276.67	28,807.21
Total Hrs Worked	80.50	
Pto Balance		185.58
Sick Available		0.00

Important Notes

COMPANY PHONE NUMBER (818)787-2222

⁴ This information cannot be determined from the wage statement alone as required by Labor Code § 226 and instead requires reference to a separate document related to Hazard Pay.

As indicated above, Defendants failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate and instead paid them at one and one-half their base rate of hourly pay without taking into account all compensation necessary when calculating and paying overtime wages. Plaintiff alleges that Defendant engaged in such conduct with respect to him, all aggrieved employees, the Overtime Aggrieved Employees, and the Hazard Pay Aggrieved Employees on a regular and consistent basis.

Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second

meal period may not be waived if the total hours worked is more than twelve (12) hours.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); *see also Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.⁵ An employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever

⁵ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13–0056–DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”).

In addition, the California Court of Appeal unequivocally held in a published decision that employees must be paid a meal/rest period premium for not receiving a proper meal/rest period as well as wages for the time that they were required to work during breaks. *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (holding that an employee whose meal period is interrupted is entitled to receive both a meal period premium and to recover minimum wages for the time worked).

Defendant failed to authorize and permit Mr. Flores and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely meal periods, interrupted their meal periods, and actively interfered in Plaintiff and the other aggrieved employees’ ability to take meal periods through their policy and practice of understaffing. Defendant’s meal period policies and practices disincentivized and discouraged Plaintiff and it often was not possible for Plaintiff and the other Meal Period Aggrieved Employees to take meal periods and/or timely meal periods within the first five (5) hours of their shift. Notably, although Defendant’s meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendants’ understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods.

In fact, due to the lack of sufficient coverage, Plaintiff and the other aggrieved employees’ meal periods were frequently interrupted—often between 3-4 times per week—and they were required to work during their meal periods.

Notably, Mr. Flores’ and the other aggrieved employees’ time records indicate that they regularly received late lunches; yet, the Company never once investigated and/or paid Mr. Flores a meal period premium and was certainly aware that it was not providing timely meal periods—see example:

Custom (Mon Jan-01 18 to Wed Nov-04 20)

Fri Aug-09 19	7:30a	12:11p	12:41p	5:00p	9:00	7:30a/ 4:00p	Left Late, Long Lun.
Fri Aug-09 19					8:00	REG1	
Fri Aug-09 19					1:00	OT1	
Sat Aug-10 19							
Sun Aug-11 19	7:00a	11:31a	12:01p	3:32p	8:00	7:00a/ 3:30p	Long Lun.
Sun Aug-11 19					8:00	REG1	
Mon Aug-12 19	7:30a	12:10p	12:40p	5:01p	9:00	7:30a/ 4:00p	Left Late, Long Lun.
Mon Aug-12 19					8:00	REG1	
Mon Aug-12 19					1:00	OT1	
Tue Aug-13 19	7:30a	12:02p	12:32p	6:01p	10:00	7:30a/ 4:00p	Left Late, Long Lun.
Tue Aug-13 19					8:00	REG1	
Tue Aug-13 19					2:00	OT1	
Wed Aug-14 19					8:00	PTO	
Thu Aug-15 19	7:00a	11:00a	11:30a	6:02p	10:30	7:00a/ 3:30p	Left Late, Long Lun.
Thu Aug-15 19					8:00	REG1	
Thu Aug-15 19					2:30	OT1	
Fri Aug-16 19							

The Company's time keeping system also labels meal periods of 30 minutes in length as "Long Lun." Meaning a long lunch once again substantiating Mr. Flores' claim that Deanco does not provide compliant meal periods:

Thu Apr-30 20	3:00p	8:00p	8:30p	11:33p	8:00	Unsch	Unsch., Long Lun.
Thu Apr-30 20					8:00	REG1	
Fri May-01 20							
Sat May-02 20							
Sun May-03 20	5:55a	11:02a	11:32a	3:35p	9:00	Unsch	Unsch., Long Lun.
Sun May-03 20					8:00	REG1	
Sun May-03 20					1:00	OT1	
Sun May-03 20							CRASH CART RE-STOCK PER J. LEPE FOR COVID 19
Sun May-03 20							7420 021 Float

Mon Sep-07 20	2:58p	8:01p	8:31p	11:34p	8:00	Flex	Long Lun., Flex
Mon Sep-07 20					8:00	HOLWKD	
Mon Sep-07 20							Worked HOL Sch
Tue Sep-08 20	2:55p	8:02p	8:32p	11:30p	8:00	Flex	Long Lun., Flex
Tue Sep-08 20					8:00	REG1	

Sun Oct-25 20	4:59a	8:35a	9:05a	1:33p	8:00	Flex	Long Lun., Flex
Sun Oct-25 20					8:00	REG1	
Mon Oct-26 20	2:58p	8:01p	8:31p	11:31p	8:00	Flex	Long Lun., Flex
Mon Oct-26 20					8:00	REG1	
Tue Oct-27 20	3:00p	8:25p	8:55p	11:30p	8:00	Flex	Long Lun., Flex
Tue Oct-27 20					8:00	REG1	

Further, Mr. Flores and the other aggrieved employees were improperly advised only that they would be entitled to a meal period for every five (5) hours of work, but not that the meal

periods must be within the first five (5) hours. *See e.g. Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (affirming a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more:

MEAL AND REST PERIOD ACKNOWLEDGMENT/AGREEMENT
(Non-Clinical)

1. I am provided a 30-minute unpaid meal period for every five (5) hours of work.
2. I am entitled to a second 30-minute unpaid meal period when my work and/or scheduled shift will be not be completed in ten (10) hours or less in one workday.
3. I am provided a ten (10) minute rest period for each four (4) hours of work or a major fraction thereof.

Defendant also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “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 (“IWC”).

Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “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. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001. Unfortunately, Plaintiff and the Meal Period Aggrieved Employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Deanco refused to pay such penalties until after receiving multiple requests from Mr. Flores and now uses the pay code “Mislnchpen” for some of these violations. However, even the payment of such premiums would not excuse Deanco’s failure to comply with the Labor Code or absolve it of liability from the PAGA claim. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020) (“employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’”) (quoting *Kirby v. Immoos Fire Protection, Inc.*, 53

Cal.4th 1244, 1256 (2012)).

Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER No. 5-2001

Labor Code § 226.7 provides “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 (“IWC”). Under IWC Wage Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001, Defendant failed to provide Plaintiff and all Rest Period Aggrieved Employees with duty-free rest periods of not less

than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required Plaintiff and the other Rest Period Aggrieved Employees to work through and/or forgo rest periods due to their chronic understaffing issues. Notably, although Defendant's rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise.

Further, Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a), 226(e), and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages,

overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Separate and independent of the foregoing, Plaintiff contends that Defendant failed to include information about the total gross wages earned on his and the other aggrieved employees' itemized wage statements through the exclusion of the separate hazard pay. Simply put, it was not possible for Plaintiff or the aggrieved employees to determine their rates of pay and the number of hours worked at each applicable hourly rate in effect nor their total gross wages or net wages earned from their wage statement alone since it did not include the hazard pay:

DEANCO HEALTHCARE LLC
14850 ROSCOE BLVD
PANORAMA CITY CA, 91402-4618

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-XXXX

Earnings Statement
Period Beginning: 08/16/2020
Period Ending: 08/29/2020
Pay Date: 09/04/2020

RONALD FLORES NUNFIO

Earnings	rate	hours	this period	year to date
Ot Prem Pa	7.9100	.50	3.96	1,102.63
Ot1	15.8100	.50	7.91	1,955.43
Reg1	15.8100	80.00	1,264.80	21,619.71
Db Prem Pa				58.25
Db1				58.25
Hazard Pay				2,375.00
Holwkd				124.24
P.T.O.				248.48
Pto Cash				776.50
Ptoflex				403.78
Retro Pay				22.82
Gross Pay			\$1,276.67	28,745.09

Deductions

Statutory	this period	total to date
Federal Income Tax	116.59	2,505.50

Other Benefits and Information

	this period	total to date
Max Elig/Comp	1,276.67	28,807.21
Total Hrs Worked	80.50	
Pto Balance		185.58
Sick Available		0.00

Important Notes
COMPANY PHONE NUMBER (818)787-2222

	2020 - 36 - 1	09/04/2020	08/29/2020	\$225.00	\$189.56	12569299	WD6/067433
	2020 - 36 - 1	09/04/2020	08/29/2020	\$1,276.67	\$0.00	00360361	WD6/067433

For instance, as evidenced here for the pay period of August 16, 2020 to August 29, 2020, Plaintiff's wage statement incorrectly listed his gross pay as \$1,276.67 when it was actually

\$1,501.67 (\$1,276.67 + \$225.00). Nor could Plaintiff ascertain from his wage statement alone his net pay nor the hourly rates in effect when including the hazard pay.

Also, separate and independent from the foregoing, Plaintiff also alleges that when Defendants provided hazard pay to the extent it included alleged overtime pay with such pay—which is impossible to completely determine since Defendant continues to willfully violate Labor Code section 226(c) by withholding the relevant and requested documents—Plaintiff contends that Defendant failed to specify the amount of hours the employees worked and/or the hourly rates in effect on Plaintiff and the other aggrieved employees wages statements in *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1070 (N.D.Cal. 2019) (finding that an employer who identified the payments as a lump sum, and did “not specify how many hours the employee worked or the employee’s hourly rate” applicable to such wages” even when making retroactive overtime payments and/or adjustments violated Labor Code section 226. For instance, for the pay period of December 6, 2020 to December 2019, 2020, Defendants failed to include any information about the amount of hours associated with Mr. Flores’ hazard pay as in *Magadia* and incorrectly advised him that his total gross pay for the pay period was only \$225.00 and his net pay was \$189.56:

DEANCO HEALTHCARE LLC 14850 ROSCOE BLVD PANDORA CITY CA, 91402-4618				Period Beginning: 12/06/2020 Period Ending: 12/19/2020 Pay Date: 12/24/2020	
Taxable Marital Status: Single Exemptions/Allowances: Federal: 0 CA: 0				RONALD FLORES NUNFIO	
Social Security Number: XXX-XX-XXXX					
Earnings				year to date	
	rate	hours	this period		
Hazard Pay			225.00	4,400.00	
Db Prem Pa				58.25	
Db1				58.25	
Holwkd				337.68	
Mislnchpen				31.62	
Ot Prem Pa				1,206.43	
Ot1				2,129.34	
P.T.O.				1,181.27	
Pto Cash				1,567.00	
Ptoflex				403.78	
Reg1				30,552.37	
Retro Pay				22.82	
Sick				126.48	
				42,165.29	
Gross Pay			\$225.00		
Deductions					
Statutory					
				3,704.79	
Federal Income Tax			-6.98	2,542.47	
Social Security Tax			-13.95	594.61	
Medicare Tax			-3.26	410.08	
CA SUI/SDI Tax			-2.25	768.88	
CA State Income Tax					
Other					
Fidelity 401K			-9.00*	1,686.62	
DENPPO				303.42	
UHCMO				854.36	
Net Pay			\$189.56		
Net Check				\$189.56	
* Excluded from federal taxable wages Your federal taxable wages this period are \$216.00					
Other Benefits and Information					
			this period	total to date	
Max Elig/Comp			225.00	42,227.41	
Hlth Plan Value				4,776.30	
Pto Balance				128.42	
Sick Available				0.00	
Important Notes					
COMPANY PHONE NUMBER (818)767-2222					
BASIS OF PAY: HOURLY					

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As previously explained, Defendant failed to maintain accurate records of the total hours worked by employees or of the time associated with security checks, bag checks, and interrupted meal periods on a regular and consistent basis. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

DEFENDANT VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...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.” Defendant pays Plaintiff and all aggrieved employees on a bi-weekly basis.

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages,

overtime wages, meal period premiums, and rest period premiums, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1209 (2008)* (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 2802

Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

As discussed in detail above, Plaintiff and the other aggrieved employees were regularly expected and required to use their cell phones for work purposes including for communicating after hours. Plaintiff complained to Defendant about the off-the-clock messages, yet to this date has never received any reimbursement for his supervisor’s frequent off-the-clock communications to him about work related issues, subjects, and tasks. Moreover, it was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties.

Although Plaintiff and the other aggrieved employees were regularly required to and/or required to use their cell phones in the discharge of their duties, Plaintiff and the other aggrieved employees were not provided with any reimbursement for the use of their cell phones. California law prohibits an employer from failing to reimburse employees from losses incurred

through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). As such, Defendant violated Labor Code § 2802 with respect to Plaintiff and all aggrieved employees.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of the alleged Labor Code violations.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON

Certified Mail #: 7020 1810 0000 4330 2092
7020 1810 0000 4330 2108
7020 1810 0000 4330 2115