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ENDORSED
FILED
ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By TANIA PIERCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

SARA ARGUETA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

SMM FACILITIES, INC., a California
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

Rg21100765

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff Sara Argueta (“Plaintiff”), as an aggrieved employee and on behalf of all
2 other non-party aggrieved employees and the State of California, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 persons who are or were employed by Defendant SMM Facilities, Inc., a California
8 corporation, and DOES 1 through 10, inclusive (collectively “Defendants”) in California as
9 non-exempt, hourly-paid employees and against whom one or more violations of any
10 provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours
11 and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
12 committed, as set forth in this complaint (“Aggrieved Employees”), at any time between one
13 year prior to Plaintiff’s filing of this complaint (in addition to all days the period was stayed or
14 tolled) until judgment. The civil penalties and other relief sought by Plaintiff exceed the
15 minimum jurisdiction limits of the Superior Court and will be established according to proof
16 at trial. Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

17 2. This Court has jurisdiction over this action pursuant to the California
18 Constitution, Article VI, section 10. The statute under which this action is brought does not
19 specify any other basis for jurisdiction.

20 3. This Court has jurisdiction over all Defendants because Defendants are either
21 citizens of California, have sufficient minimum contacts in California, or otherwise
22 intentionally avail themselves of the California market so as to render the exercise of
23 jurisdiction over them by the California courts consistent with traditional notions of fair play
24 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
25 that the State of California, the real party in interest, is not a “citizen” for purposes of
26 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
27 Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for
28 purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated

1 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
2 action. *Id.* at 1122.

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

6 5. PAGA authorizes aggrieved employees to sue as private attorneys general their
7 current or former employers for various civil penalties for violations of various provisions in
8 the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff is a resident of Oakland, California. Defendants employed Plaintiff
11 from approximately November 6, 2019 until approximately October 15, 2020, as an hourly-
12 paid day porter at Stanford Health Care's medical center located in Emeryville, California.

13 7. As a non-exempt, hourly-paid employee, Plaintiff typically worked
14 approximately six to eight hours or more per day, four to five days per week, and twenty-four
15 to forty hours or more per week. Plaintiff's job duties included cleaning and upkeep of various
16 sections of the medical center, stocking supplies, and completing work orders submitted by
17 employees of Stanford Health Care – nurses, front desk attendants, and security guards.

18 8. Plaintiff is informed and believes, and thereon alleges, that Defendant SMM
19 Facilities, Inc. is a California corporation that is doing business in the state of California.
20 Plaintiff is informed and believes, and thereon further alleges that at all times hereinafter
21 mentioned, Defendant SMM Facilities, Inc. is an employer whose employees are engaged
22 throughout the State of California.

23 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
24 herein under the fictitious names DOES 1 through 10 and will seek leave of this Court to
25 amend the complaint and serve such fictitiously named defendants once their names and
26 capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES
27 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the
28 other named Defendants, and that each and all of the acts and omissions alleged herein were

performed by, or are attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

12. Plaintiff is informed and believes, and thereon alleges, that Defendants are limited liability companies, corporations and/or general partnerships that offers commercial cleaning and janitorial services to businesses across California.

13. Upon information and belief, Defendants maintain a centralized Human Resources department in California, for all Aggrieved Employees, including Plaintiff. At all relevant times, Defendants issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees, including Plaintiff and Aggrieved Employees, regardless of their location or position.

14. Upon information and belief, Defendants process payroll for all Aggrieved Employees working for Defendants in California. Further, Defendants issue the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their work location, position, or manner in which each employee's employment ended. In other words, Defendants utilized the same methods and formulas when calculating wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

15. Defendants continue to employ non-exempt, hourly-paid employees.

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

5 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
6 Aggrieved Employees were not fully compensated because, among other reasons, all hours
7 worked may not have been recorded and because Defendants did not always pay for all hours
8 worked.

9 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
11 wages for overtime compensation and that they were not receiving overtime wages at the
12 correct overtime rate and/or for work that was required to be performed.

13 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
15 minimum wages for all hours worked. In violation of the California Labor Code and
16 applicable IWC Wage Order, Plaintiff and Aggrieved Employees were not paid at least
17 minimum wages for all work performed.

18 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
20 accordance with the Labor Code and applicable IWC Wage Order; that Plaintiff and
21 Aggrieved Employees were entitled to payment of one additional hour of pay at their regular
22 rates of compensation when they were not provided with timely, uninterrupted, thirty-minute
23 meal periods; and that Plaintiff and Aggrieved Employees were not provided with all meal
24 periods nor payment of one additional hour of pay at their regular rates of compensation when
25 they were not provided a timely, uninterrupted, thirty-minute meal period.

26 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
28 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or

1 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
2 additional hour of pay at their regular rates of compensation when they were not provided
3 with a compliant rest period, and that Plaintiff and Aggrieved Employees were not provided
4 compliant rest periods nor payment of one additional hour of pay at their regular rates of
5 compensation when they were not provided a compliant rest period.

6 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete
8 and accurate wage statements in accordance with California law. In violation of the California
9 Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate
10 wage statements.

11 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to maintain accurate and complete payroll records in
13 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete time records in
16 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

17 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
19 of wages during their employment. In violation of the California Labor Code, Plaintiff and
20 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
21 overtime wages, minimum wages, and meal period and rest period premium wages within
22 permissible time periods.

23 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
25 of all wages earned upon termination of employment. In violation of the California Labor
26 Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due,
27 including, but not limited to, overtime wages, minimum wages, and meal period and rest
28 period premium wages within permissible time periods.

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Aggrieved Employees were entitled to reimbursement
3 for all business-related expenditures and/or losses they incurred during the course and scope
4 of their employment, and that they did not receive reimbursement of applicable business-
5 related expenditures and/or losses they incurred.

6 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with
8 written notice of the material terms of their employment with Defendants as required by the
9 California Wage Theft Prevention Act, but failed to do so.

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

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

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

26 32. Plaintiff and other current and former non-exempt, hourly-paid employees of
27 Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they
28 are all Defendants' current or former employees and one or more of the alleged violations

1 were committed against them.

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

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated, including the facts and theories to support the alleged
9 violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(a) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The LWDA shall notify the employer and the aggrieved employee or
14 representative by certified mail that it does not intend to investigate the
15 alleged violation ("LWDA Notice") within sixty (60) calendar days of
16 the postmark date of the aggrieved employee's notice. Upon receipt of
17 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
18 (65) calendar days of the postmark date of the aggrieved employee's
19 notice, the aggrieved employee may commence a civil action pursuant
20 to California Labor Code section 2699 to recover civil penalties.

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

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

1 facts and theories to support the alleged violation.

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

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

14 35. On or about March 26, 2021, Plaintiff provided written notice by online filing
15 to the LWDA and by Certified Mail to Defendant SMM Facilities, Inc. of the specific
16 provisions of the California Labor Code alleged to have been violated, including facts and
17 theories to support the alleged violations, in accordance with the applicable filing fee of
18 seventy-five dollars (\$75). A true and correct copy of Plaintiff's written notice to the LWDA
19 and Defendant SMM Facilities, Inc. dated March 26, 2021, is attached as Exhibit 1.

20 36. As of the filing of this complaint, over sixty-five days have passed since
21 Plaintiff sent the written notice described above to the LWDA, and the LWDA has not
22 responded that it intends to investigate Plaintiff's claims and Defendants have not cured the
23 violations.

24 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
26 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
27 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802,
28 and 2810.5(a)(1) as well as all applicable IWC Wage Orders.

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

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

40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5(a)(1) as well as all applicable IWC Wage Orders.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

42. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 1182.12 and 2810.5(a)(1).

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

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

1 Wage Order for Defendants' failure to compensate Plaintiff and
2 Aggrieved Employees with all required overtime pay, as set forth
3 below;

4 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and
5 1197.1, and the applicable IWC Wage Order for Defendants' failure to
6 compensate Plaintiff and Aggrieved Employees with at least minimum
7 wages for all hours worked, as set forth below;

8 (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and Aggrieved Employees with meal periods, as set forth below;

11 (d) Violation of Labor Code sections 226.7 and 1198, and the applicable
12 IWC Wage Order for Defendants' failure to provide Plaintiff and
13 Aggrieved Employees with rest periods, as set forth below;

14 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiff and Aggrieved Employees, as set forth below;

17 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable
18 IWC Wage Order for failure to maintain accurate payroll records, as set
19 forth below;

20 (g) Violations of Labor Code section 1198 and the applicable IWC Wage
21 Order for failure to maintain accurate time records, as set forth below;

22 (h) Violation of Labor Code section 204 for failure to timely pay all earned
23 wages during employment, as set forth below;

24 (i) Violation of Labor Code sections 201, 202, and 203 for failure to timely
25 pay all earned wages upon termination, as set forth below;

26 (j) Violations of Labor Code sections 2800 and 2802 for failure to
27 reimburse Plaintiff and Aggrieved Employees for all business
28 expenditures and/or losses necessarily incurred, as set forth below;

(k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and Aggrieved Employees' employment with Defendants, as set forth more fully below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBD. 3**

44. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

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

46. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

47. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day, overtime compensation at a rate of two times their regular rate of pay, and required to pay Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

48. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

49. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half times the regular rate of pay for hours worked in excess of eight hours in a
2 day or forty hours in a week or for the first eight hours worked on the seventh day of work,
3 and to overtime compensation at twice the employee's regular rate of pay for hours worked in
4 excess of twelve hours in a day or in excess of eight hours in a day on the seventh day of
5 work.

6 50. Defendants failed to pay all overtime wages owed to non-exempt, hourly-paid
7 Aggrieved Employees. During the relevant time period, non-exempt, hourly-paid Aggrieved
8 Employees were not paid overtime premiums for all of the hours they worked in excess of
9 eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week,
10 and/or for the seventh consecutive day of work, sometimes because all hours that they worked
11 were not recorded, and other times because they were simply not paid for all hours that were
12 recorded and/or worked. As a result, Plaintiff believes the hours non-exempt, hourly-paid
13 Aggrieved Employees worked may not have been properly recorded and/or paid, and
14 therefore, non-exempt, hourly-paid Aggrieved Employees also may not have been properly
15 compensated for all hours that were recorded and/or worked.

16 51. On information and belief, Defendants have a company-wide policy and/or
17 practice of improperly rounding employee clock-in and clock-out times to the nearest quarter
18 hour. Specifically, Defendants' rounding policy is, and continues to be, unfair and has, over
19 time, resulted in the underpayment of wages to Plaintiff and Aggrieved Employees.
20 Alternatively, Defendants have a policy and/or practice of not paying for all time worked prior
21 to and/or after the scheduled start/end times of Plaintiff's and Aggrieved Employee's shifts.
22 To the extent Defendants' rounding policy has taken away time worked that was eligible for
23 overtime, Plaintiff and Aggrieved Employees were denied overtime pay for all hours worked.

24 52. On information and belief, Defendants have a company-wide policy and/or
25 practice of staffing the commercial businesses, offices, and medical centers they contract with.
26 The understaffing resulted in too few employees on duty to handle the workload and provide
27 uninterrupted meal periods. Plaintiff and Aggrieved Employees were not provided adequate
28 meal period coverage to allow them to be relieved of their duties for compliant meal periods.

1 Thus, Plaintiff and Aggrieved Employees would have to continue with their duties, such as
2 responding to work orders after clocking out for meal periods. This would result in Plaintiff
3 and Aggrieved Employees working while off-the-clock during their scheduled shifts on a
4 regular basis. Defendants would not permit Plaintiff and Aggrieved Employees to adjust their
5 clock-in or clock-out times so that they could account for and be compensated for this off-the-
6 clock work.

7 53. On information and belief, Defendants have a company-wide policy and/or
8 practice of communicating with employees regarding work-related matters as well as directing
9 employees to continue working and/or return to work during the employees' meal periods and
10 when those employees are otherwise clocked out. As a result of this policy and/or practice,
11 Plaintiff and Aggrieved Employees performed work while off-the-clock.

12 54. Additionally, Plaintiff and Aggrieved Employees were not paid all overtime
13 wages owed for work performed during pay periods in which Defendants failed to pay their
14 employees the correct hourly rate. For example, the city of Emeryville enacted a Minimum
15 Wage Ordinance, which applies to Plaintiff and other Aggrieved Employees, that increases the
16 minimum wage every year on July 1. At the time Plaintiff was hired by Defendants, she
17 earned \$16.30 per hour. On July 1, 2020, the minimum wage increased to \$16.84, but
18 Defendants did not increase their employees' wages accordingly until on or after August 16,
19 2020. Therefore, the overtime hours Plaintiff and other Aggrieved Employees worked during
20 this period were not paid at the correct overtime rates.

21 55. Defendants knew or should have known that, as a result of their policies,
22 practices and/or procedures, Plaintiff and Aggrieved Employees were at times performing
23 their assigned duties off-the-clock, were subject to control of Defendants, and/or were
24 suffered or permitted to perform work for which they were not paid. Defendants also knew, or
25 should have known, that they did not compensate Plaintiff and Aggrieved Employees for off-
26 the-clock work, or all hours worked. Because Plaintiff and Aggrieved Employees sometimes
27 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
28 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At

1 other times, Defendants simply did not pay for all the hours that were recorded. Therefore,
2 Plaintiff and Aggrieved Employees were not paid overtime wages for all of the overtime hours
3 they actually worked.

4 56. Defendants knew or should have known that, as a result of their policies and/or
5 practices, Plaintiff and Aggrieved Employees were performing work for which Plaintiff and
6 Aggrieved Employees were not paid. Defendants also knew, or should have known, that they
7 did not compensate Plaintiff and Aggrieved Employees for all hours worked. Because Plaintiff
8 and Aggrieved Employees sometimes worked shifts of eight hours a day or more and forty
9 hours a week or more, some of this work performed before and/or after shifts qualified for
10 overtime premium pay. Therefore, Plaintiff and Aggrieved Employees were not paid overtime
11 wages for all of the overtime hours they actually worked.

12 57. Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
13 compensation owed, as required by California law, violates the provisions of California Labor
14 Code sections 510 and 1198. Plaintiff and Aggrieved Employees are entitled to recover civil
15 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 558, 1194 and/or
16 2699(a), (f), and (g).

17 **FAILURE TO PAY MINIMUM WAGES IN**
18 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, AND 1198 AND**
19 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBD. 4**

20 58. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
21 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum
22 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is
23 unlawful. Compensable work time defined in Wage Order No. 5 as "the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, §
26 11040(2)(K) (defining "Hours Worked").

27 59. As set forth above, Plaintiff is informed and believes, and thereon alleges, that
28 Defendants' policy and/or practice of rounding employee time records to the nearest quarter

hour is applied in a manner that is unfair and, over time, has resulted in underpayments of wages. Additionally, Defendants' policy and/or practice of understaffing has caused a lack of meal period coverage and lead employees to perform off-the-clock work during their meal periods. Moreover, Defendants' policy or practice of communicating with employees regarding work-related matters, as well as directing employees to continue working and/or return to work during meal periods, and when those employees are otherwise clocked out, resulted in employees performing unpaid work. Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff and other Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods. Additionally, Defendants' failure to properly pay Plaintiff and other Aggrieved Employees the correct minimum wage also resulted in minimum wage violations.

60. Defendants systematically did not pay Plaintiff and Aggrieved Employees all hours worked. To the extent that these unpaid hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked in violation of California Labor Code sections 223, 1182.12, 1194, 1197, and 1198. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1194, 1197.1, and/or 2699(a), (f), and (g).

**FAILURE TO PROVIDE AND RECORD MEAL PERIODS IN
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBD. 11**

61. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by Defendants.

62. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more

1 than six hours, the meal period may be waived by mutual consent of both the employer and
2 the employee. Under California law, first meal periods must start after no more than five
3 hours. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

4 63. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), and 1198 provide that no employer shall require an employee to work during any meal
6 period mandated by an applicable order of the IWC. The wage order's meal period
7 requirement is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free
8 to leave the premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*
9 *v. Super. Ct.*, 53 Cal. 4th at 1036.

10 64. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
11 1198, and the applicable IWC Wage Order also require employers to provide a second meal
12 period of not less than thirty minutes if an employee works over ten hours per day, and if one
13 is not provided, pay an employee one additional hour of pay at the employee's regular rate of
14 compensation, except that if the total hours worked is no more than twelve hours, the second
15 meal period may be waived by mutual consent of the employer and the employee only if the
16 first meal period was not waived.

17 65. As stated above, at all relevant times Defendants had, and continue to have, a
18 company-wide policy and/or practice of understaffing the commercial businesses, offices, and
19 medical centers they contract with which resulted in a lack of break coverage and prevented
20 Plaintiff and Aggrieved Employees from taking all timely, uninterrupted meal periods,
21 including second meal periods, to which they were entitled. Defendants' policies and practices
22 fail to relinquish all control over employees during breaks. For example, Defendants' policy
23 and/or practice of requiring employees respond immediately to work orders even if the orders
24 came in during meal periods resulted in Plaintiff and Aggrieved Employees having to work
25 through many of their meal periods, having their meal periods interrupted to return to work,
26 and/or waiting until after they had already worked five hours before taking meal periods.

27 66. Additionally, for the same reason, Defendants did not provide Plaintiff and
28 Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours

1 and who did not waive their legally-mandated meal periods by mutual consent to take a
2 second uninterrupted meal period of not less than thirty minutes.

3 67. Defendants' rounding policy and/or practice resulted in otherwise late and short
4 meal periods appearing as compliant in Plaintiff's and Aggrieved Employee's time records.
5 Moreover, Defendants' Time Detail Report for Plaintiff, which provides rounded clockings,
6 identifies numerous meal periods taken after the fifth hour of work in violation of California
7 law.

8 68. In addition, Defendants' company-wide policy and/or practice of requiring their
9 employees to keep their personal cellular phones on them during meal periods to answer
10 work-related calls further prevented Plaintiff and Aggrieved Employees from being relieved
11 of their duties and being free from employer control during meal periods.

12 69. At all times herein mentioned, Defendants knew or should have known that, as
13 a result of their practices and policies, Plaintiff and Aggrieved Employees have been required
14 to perform some of their assigned duties during meal periods and that Defendants did not pay
15 Plaintiff and Aggrieved Employees meal period premium wages when meal periods were late,
16 interrupted, and/or missed. As a result, Plaintiff and Aggrieved Employees had to work
17 through some or all of their meal periods, had their meal periods interrupted to return to work,
18 and/or waited extended periods of time before taking meal periods. Plaintiff and Aggrieved
19 Employees were made to work over five hours before Defendants permitted and authorized
20 them to take their meal periods, and their meal periods were cut short and/or taken late so that
21 Plaintiff and Aggrieved Employees could attend to their assigned tasks.

22 70. Moreover, upon information and belief, Defendants engaged in a systematic,
23 company-wide practice and/or policy of not properly training Plaintiff and Aggrieved
24 Employees on their entitlement to meal period premium payments from meal period
25 violations. As a result, Defendants failed to provide Plaintiff and Aggrieved Employees with
26 compliant meal periods in violation of California Labor Code sections 226.7 and 512(a) and
27 failed to pay the full meal period premiums due. Alternatively, to the extent that Defendants
28 did pay meal period premium wages to Plaintiff and Aggrieved Employees, such payments

1 were admissions of Defendants’ failure to provide meal periods.

2 71. Defendants’ conduct violates California Labor Code sections 226.7, 512(a), and
3 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore
4 entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, as well as unpaid
5 wages, pursuant to Sections 226.7, 558 and/or 2699(a), (f), and (g).

6 **FAILURE TO PROVIDE REST PERIODS IN**
7 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
8 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBD. 12**

9 72. At all relevant times herein set forth, California Labor Code sections 226.7 and
10 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved
11 Employees’ employment by Defendants.

12 73. At all relevant times, the applicable IWC Wage Order provides that “[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period” and that the “rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof” unless the total daily work time is less than three and one -
17 half hours.

18 74. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to provide rest periods under
21 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
22 “relinquish any control over how employees spend their break time, and relieve their
23 employees of all duties — including the obligation that an employee remain on call. A rest
24 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
25 257, 269-270 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage
26 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
27 additional hour of pay at their regular rates of compensation for each workday that a required
28 rest period was not provided.

1 75. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three
2 and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all
3 uninterrupted net ten-minute rest periods to which they were entitled.

4 76. Upon information and belief, during the relevant time period, Defendants’
5 company-wide policy and practice of understaffing the commercial businesses, offices, and
6 medical centers they contract with which resulted in a lack of break coverage and prevented
7 Plaintiff and Aggrieved Employees from taking all timely, uninterrupted rest periods to which
8 they were entitled. Defendants’ policies and practices fail to relinquish all control over
9 employees during breaks. For example, Defendants’ policy and/or practice of requiring
10 employees respond immediately to work orders even if the orders came in during rest periods
11 resulted in Plaintiff and Aggrieved Employees having to work through many of their rest
12 periods or having their rest periods interrupted to return to work.

13 77. Additionally, Defendants had a company-wide policy and/or practice of
14 requiring their employees to keep their personal cellular phones on them during rest periods to
15 answer work-related calls further prevented Plaintiff and Aggrieved Employees from being
16 relieved of their duties and being free from employer control during rest periods.

17 78. Upon information and belief, Defendants have also engaged in a systematic,
18 company-wide practice and/or policy of not paying rest period premiums owed when rest
19 periods are not provided. Thus, Defendants denied Plaintiff and Aggrieved Employees rest
20 periods and failed to pay them rest period premium wages due, in violation of Labor Code
21 section 226.7 and the applicable IWC Wage Order.

22 79. To the extent that Defendants did pay rest period premium wages to Plaintiff
23 and Aggrieved Employees, such payments are admissions of Defendants’ failure to provide
24 rest periods.

25 80. Defendants’ conduct violates California Labor Code sections 226.7 and 1198
26 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled
27 to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Sections 226.7,
28 2699(a), (f), and (g).

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

81. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

82. Labor Code section 226(a) requires employers to make, keep and furnish true, accurate, and complete employment records. Defendants have not provided Plaintiff and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017). (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”) Rather, Labor Code section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

83. Defendants have furnished Plaintiff and Aggrieved Employees with incomplete and inaccurate wage statements. Defendants failed to provide accurate wage statements for Plaintiff and Aggrieved Employees showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and/or failing to state all hours worked as a result of not recording or stating all the hours that Plaintiff and Aggrieved Employees worked off-the-clock.

84. Because Defendants failed to provide, among other things, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly

rate, the accurate number of total hours worked, as well as gross wages earned, and net wages earned on wage statements, Plaintiff and Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

85. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

**FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBD. 7**

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

87. During the relevant time period, and in violation of Labor Code section 1174(d), Defendants failed to maintain accurate payroll records for Plaintiff and Aggrieved Employees showing the accurate daily hours worked and the wages paid as well as failing to correctly list the gross wages and net wages earned by them.

88. Defendants' conduct violates California Labor Code sections 1174(d) and 1198 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 1174.5

1 and/or 2699(a), (f), and (g).

2 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
3 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
4 **CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBDIVISION 7**

5 89. At all times relevant herein set forth, California Labor Code section 1198
6 provides that the maximum hours of work and the standard conditions of labor shall be those
7 fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
8 1198 further provides that “[t]he employment of any employees for longer hours than those
9 fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant
10 to the applicable IWC Wage Order, employers are required to keep accurate time records
11 showing when the employee begins and ends each work period and meal period. Cal. Code
12 Regs. Tit. 8, § 11040(7)(A).

13 90. During the relevant time period, Defendants failed, on a company-wide basis,
14 to keep accurate records of hours worked for Plaintiff and Aggrieved Employees, in violation
15 of Section 1198 and the applicable IWC Wage Order.

16 91. Because Defendants failed to provide, among other things, the accurate number
17 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked on wage statements,
19 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
20 information on the wage statements themselves, that they were paid correctly and in full and
21 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
22 other Aggrieved Employees have had to look to sources outside of the wage statements
23 themselves and reconstruct time records to determine whether in fact they were paid correctly
24 and the extent of underpayment.

25 92. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
26 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
27 2699(a), (f), and (g).

28 \\\

**FAILURE TO PAY WAGES DURING EMPLOYMENT IN
VIOLATION OF LABOR CODE SECTION 204**

93. At all times relevant herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the first and the fifteenth days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth and the twenty-sixth day of the month during which the labor was performed.

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

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

96. At all relevant times herein, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum wages, and meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

97. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

**FAILURE TO PAY WAGES UPON TERMINATION IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201 AND 202**

98. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 hours thereafter, unless the employee has given seventy-two hours previous notice of his or
4 her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting.

6 99. During the relevant time period, on information and belief, Defendants failed to
7 pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all their
8 earned wages at the time of discharge or within seventy-two hours of their leaving
9 Defendants' employ, including but not limited to, overtime wages, minimum wages, and meal
10 period and rest period premium wages, either at the time of discharge or within seventy-two
11 hours of their leaving Defendants' employment.

12 100. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no
13 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
14 within seventy-two hours of their leaving Defendants' employment, violates Labor Code
15 sections 201 and 202. Plaintiff and Aggrieved Employees are therefore entitled to recover
16 civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a),
17 (f), and (g).

18 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN**
19 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802 AND CALIFORNIA**
20 **CODE OF REGULATIONS TITLE 8, SECTION 11040 SUBDIVISION 9**

21 101. At all times herein set forth, California Labor Code sections 2800 and 2802
22 requires employers to pay for all necessary expenditures and losses incurred by the employee
23 in the performance of his or her job. The purpose of Labor Code sections 2800 and 2802 is to
24 prevent employers from passing off their cost of doing business and operating expenses on to
25 their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
26 (2014).

27 102. The applicable IWC Wage Order provides that: "[w]hen tools or equipment are
28 required by the employer or are necessary to the performance of a job, such tools and

1 equipment shall be provided and maintained by the employer, except that an employee whose
2 wages are at least two (2) times the minimum wage provided herein may be required to
3 provide and maintain hand tools and equipment customarily required by the trade or craft.”
4 Cal. Code Regs. tit. 8 § 11040, subd. 9.

5 103. During the relevant time period, Defendants, on a company-wide basis, required
6 that Plaintiff and Aggrieved Employees utilize their own personal cell phones to carry out their
7 job duties, but Defendants did not reimburse them for the costs of their cell phone plans and data
8 charges. For example, Plaintiff and Aggrieved Employees were required to download a third-party
9 timekeeping app onto their phones that they were required to use to clock in and clock out for
10 shifts. Plaintiff was also required to keep her personal cellular phone with her at all times while at
11 work, including during meal periods and rest periods, in order to carry out her duties such as
12 communicating with management or clients regarding work-related matters. Although Defendants
13 required Plaintiff and Aggrieved Employees to regularly utilize their personal cellular phones to
14 carry out work-related responsibilities, Defendants did not reimburse their employees for this cost.
15 Defendants could have provided Plaintiff and Aggrieved Employees with the actual tools and
16 materials required for use on the job, including company phones or physical time clocks, but
17 instead, Defendants passed this operating cost off onto Plaintiff and Aggrieved Employees.

18 104. Defendants’ policy, practice, and/or procedure of passing its operating costs on
19 to Plaintiff and Aggrieved Employees violates Labor Code sections 2800 and 2802. Plaintiff
20 and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees,
21 costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
23 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 2810.5**

24 105. California’s Wage Theft Prevention Act was enacted to ensure that employers
25 provide employees with basic information material to their employment relationship at the
26 time of hiring, and to ensure that employees are given written and timely notice of any
27 changes to basic information material to their employment. Codified at California Labor Code
28 section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

1 employer must provide written notice to employees containing basic and material payroll
2 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
3 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
4 overtime, the regular payday designated by the employer, and any allowances claims as part
5 of the minimum wage, including meal or lodging allowances.

6 106. Effective January 1, 2015, an employer's written notice pursuant to section
7 2810.5 must also include a statement that the employee may accrue and use sick leave; has a
8 right to request and use accrued paid sick leave; may not be terminated or retaliated against
9 for using or requesting the use of accrued paid sick leave; and has the right to file a complaint
10 against an employer who retaliates.

11 107. During the relevant time period, Defendants failed to provide a written notice to
12 Plaintiff and Aggrieved Employees that lists the requisite information set forth in Labor Code
13 section 2810.5(a)(1)(A)-(C) on a company-wide basis.

14 108. Defendants' failure to provide Plaintiff and Aggrieved Employees with written
15 notice of basic information regarding their employment with Defendants is in violation of
16 Labor Code section 2810.5.

17 109. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
18 penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a),
19 (f), and (g).

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for
24 relief and judgment against Defendants, jointly and severally, as follows:

25 1. For civil penalties and attorneys' fees and costs in excess of twenty-five
26 thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a
27 different amount.
28

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11040(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11040(7) (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 2800 and 2802 (by failing to reimburse employees for business expenses necessarily incurred); and 2810.5 (by failing to provide written notice of material terms of employment).

3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 as well as all applicable IWC Wage Orders;

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5. For pre-judgment and post-judgment interest as provided by law; and
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: June 1, 2021

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

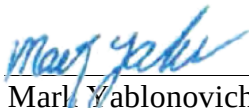
By: 
Mark Yablonoich
Attorneys for Plaintiff Sara Argueta

EXHIBIT 1

LAW OFFICES OF
MARK YABLONOVICH
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March 26, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Sara Argueta v. SMM Facilities, Inc.*

Dear PAGA Administrator:

This law firm represents Sara Argueta (“Ms. Argueta”) in connection with her claims under the California Labor Code against her former employer SMM Facilities, Inc. (“SMM”).

The employer may be contacted directly:

SMM Facilities, Inc.
542 E. Brokaw Road
San Jose, CA 95112

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

SMM employed Ms. Argueta from approximately November 6, 2019 to approximately October 15, 2020, as an hourly-paid Day Porter at Stanford Health Care’s medical center located in Emeryville, California. Ms. Argueta typically worked approximately six to eight hours or more per day, four to five days per week, and 24 to 40 hours or more per week. Her job duties included cleaning and upkeep of various sections of the medical center cleaning, stocking supplies, and completing work orders submitted by employees of Stanford Health Care – nurses, front desk attendants, and security guards.

SMM committed one or more of the following Labor Code violations against Ms. Argueta and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved

Re: *Sara Argueta v. SMM Facilities, Inc.*
March 26, 2021
Page 2 of 13

employee” pursuant to California Labor Code section 2699(c):¹

SMM’s Company-Wide and Uniform Payroll and Human Resources Practices

SMM is a California corporation that offers commercial cleaning and janitorial services to businesses across California. Upon information and belief, SMM maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for SMM, including Ms. Argueta and other Aggrieved Employees. At all relevant times, SMM issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Argueta and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, SMM maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for SMM in California, including Ms. Argueta and other Aggrieved Employees. Further, SMM issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. SMM’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, SMM utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Argueta and other Aggrieved Employees in California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11040 (“Wage Order No. 4”), require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. Wage Order No. 4 further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

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

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 3 of 13

for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

SMM failed to pay all overtime wages owed to Ms. Argueta and other Aggrieved Employees. During the relevant time period, Ms. Argueta and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work, sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. As a result, Ms. Argueta believes the hours she and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Ms. Argueta and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

On information and belief, SMM has a company-wide policy and/or practice of improperly rounding employee clock- in and clock- out times to the nearest quarter hour. Specifically, SMM's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Ms. Argueta and other Aggrieved Employees. Alternatively, SMM has a policy and/or practice of not paying for all time worked prior to and/or after the scheduled start/end times of Ms. Argueta and other Aggrieved Employee's shifts. To the extent SMM's rounding policy has taken away time worked that was eligible for overtime, Ms. Argueta and other Aggrieved Employees were denied overtime pay for all hours worked.

Additionally, on information and belief, SMM has a company-wide policy and/or practice of understaffing the commercial businesses, offices, and medical centers it contracts with. The understaffing resulted in too few employees on duty to handle the workload and provide uninterrupted meal periods. Ms. Argueta and other Aggrieved Employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. Thus, Ms. Argueta and other Aggrieved Employees would have to continue with their duties, such as responding to work orders after clocking out for meal periods. This would result in Ms. Argueta and other Aggrieved Employees working while off-the-clock during their scheduled shifts on a regular basis. SMM would not permit Ms. Argueta and other Aggrieved Employees to adjust their clock-in or clock-out times so that they could account for and be compensated for this off-the-clock work.

Moreover, Ms. Argueta and other Aggrieved Employees were not paid all overtime wages owed for work performed during pay periods in which SMM failed to pay its employees the correct hourly rate. For example, the city of Emeryville enacted a Minimum Wage Ordinance, which applies to Ms. Argueta and other Aggrieved Employees, that increases the minimum wage every year on July 1.² At the time Ms. Argueta was hired by SMM, she earned \$16.30 per hour. On July 1, 2020, the minimum wage increased to \$16.84 and SMM did not increase its employees' wages accordingly until on or after August 16, 2020. Therefore, the overtime hours Ms. Argueta

² See <https://www.emeryville.org/1024/Minimum-Wage-Ordinance>.

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 4 of 13

and other Aggrieved Employees worked during this period were not paid at the correct overtime rates.

SMM knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Argueta and other Aggrieved Employees were at times performing their assigned duties off-the-clock, were subject to control of SMM, and/or were suffered or permitted to perform work for which they were not paid. SMM also knew, or should have known, that it did not compensate Ms. Argueta and other Aggrieved Employees for off-the-clock work or all hours worked. Because Ms. Argueta and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other times, SMM simply did not pay for all the hours that were recorded. Therefore, Ms. Argueta and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. SMM's failure to pay Ms. Argueta and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and Wage Order No. 4.

Furthermore, based upon information and belief, SMM's regular rate of pay for calculating overtime wages did not include all required remunerations, including non-discretionary bonuses and incentive pay, or the correct calculation. Therefore, during times when Aggrieved Employees worked overtime and received non-discretionary bonuses and/or incentive pay, SMM failed to pay all overtime wages by paying a lower overtime rate than required by California law.

Based on the foregoing, Ms. Argueta and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and Wage Order No. 4, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 4 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040, subd. 2(K) (defining "Hours Worked").

As set forth above, on information and belief, SMM's policy and/or practice of rounding employee time records to the nearest quarter hour is applied in a manner that is unfair and, over time, has resulted in underpayments of wages. Additionally, SMM's policy and/or practice of understaffing has caused a lack of meal period coverage and lead employees to perform off-the-clock work during their meal periods. Moreover, SMM's failure to properly pay Ms. Argueta and

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 5 of 13

other Aggrieved Employees the correct minimum wage resulted in minimum wage violations.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, SMM did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 4. Ms. Argueta and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1194, 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11040 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and Wage Order No. 4 require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and Wage Order No. 4, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start after no more than five hours. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11040, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Moreover, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, No. 2:09-cv-09554, 2011 U.S. Dist. LEXIS 156685, at *11-*12 (C.D. Cal. Jan. 11, 2011).

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. Wage Order No. 4 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11040, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and Wage Order No. 4, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 6 of 13

On information and belief, SMM has a company-wide policy and/or practice of understaffing the commercial businesses, offices, and medical centers it contracts with which resulted in a lack of break coverage and prevented Ms. Argueta and other Aggrieved Employees from taking all timely, uninterrupted thirty-minute meal periods, including second meal periods, to which they were entitled. Moreover, SMM's policy and/or practice of requiring employees respond immediately to work orders even if the orders came in during meal periods resulted in employees having interrupted or otherwise shortened meal periods.

Additionally, SMM's rounding policy and/or practice resulted in otherwise late and short meal periods appearing as compliant in Ms. Argueta's and other Aggrieved Employee's time records. Moreover, SMM's Time Detail Report for Ms. Argueta, which provides rounded clockings, identifies numerous meal periods taken after the fifth hour of work in violation of California law.

SMM knew or should have known that as a result of these policies and/or practices, Ms. Argueta and other Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods and that they did not receive timely meal periods. As a result, Ms. Argueta and other Aggrieved Employees had to work through all or part of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

As with meal periods, SMM's company-wide staffing policy and/or practice prevented Ms. Argueta and other Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a result, Ms. Argueta and other Aggrieved Employees would frequently work shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all uninterrupted ten-minute rest periods to which they were entitled. Ms. Argueta was not able to take rest periods due to the pressure SMM placed on her to meet workload demands, as well as a lack of break coverage.

In addition, SMM's company-wide policy and/or practice of requiring its employees to keep their personal cellular phones on them during meal and rest periods to answer work-related calls further prevented Ms. Argueta and other Aggrieved Employees from being relieved of their duties during meal and/or rest periods.

SMM also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Argueta and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Argueta and other Aggrieved Employees were not informed of when meal and/or rest period premiums were owed to them. Based upon information and belief, Ms. Argueta and other Aggrieved Employees did not receive all meal period and/or rest period premium wages owed when compliant meal periods and rest periods were not provided. To the extent that SMM did pay meal period and/or rest period premium wages to Ms. Argueta and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees received non-discretionary bonuses and/or

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 7 of 13

incentive pay, those remuneration were not included in Ms. Argueta's regular rate of compensation for calculating meal period and/or rest period premiums and resulted in an underpayment of meal period and/or rest period premium wages.

Accordingly, SMM failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No. 4. Ms. Argueta and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to make, keep and furnish true, accurate, and complete employment records. SMM has not provided Ms. Argueta and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1).") Rather, Labor Code section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

SMM has furnished Ms. Argueta and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, SMM violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because SMM did not record all the hours Ms. Argueta and other Aggrieved Employees worked while off-the-clock, improperly rounded hours, and did not pay all hours recorded, SMM did not list the correct amount of gross wages and net wages earned by Ms. Argueta and other Aggrieved Employees in compliance with Section 226(a)(1) and (5), respectively. SMM also did not accurately list the total hours worked by Ms. Argueta and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9). Additionally, because SMM did not always calculate Ms. Argueta's and other Aggrieved Employees' minimum wage correctly or their regular rate for purposes of paying overtime and/or premium wages, it did not list the correct amount of gross wages and net wages earned by Ms. Argueta and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). SMM also did not correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, correct rates of compensation for meal period and rest period premium wages, and correct minimum wages in violation of Section 226(a)(9). Furthermore, because SMM failed to pay all meal period and rest period premiums to Ms. Argueta and other Aggrieved Employees, SMM did

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 8 of 13

not list the correct amount of gross wages and net wages earned by Ms. Argueta and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5).

Because SMM failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Argueta and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full and were given confusing and/or incomplete information about their employer. Instead, Ms. Argueta and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Argueta and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code section 226(a), pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11040 Subdivision 7

Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by Section 1174(d). During the relevant time period, SMM willfully failed to maintain accurate payroll records for Ms. Argueta and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to Wage Order No. 4, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, § 11040, subd. 7. During the relevant time period, SMM failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Ms. Argueta and other Aggrieved Employees, in violation of Labor Code section 1174(d) and Wage Order No. 4.

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 9 of 13

Additionally, SMM failed to maintain all time records for Ms. Argueta in violation of Wage Order No. 4. In response to Ms. Argueta's request for her records pursuant to Sections 226(c) and 1198.5, SMM produced her personnel file and employment records. The production included, among other things, various forms of time records for Ms. Argueta from February 16, 2020 to October 17, 2020. Notably absent, however, are any time records from Ms. Argueta's initial date of hire, November 9, 2019, through February 15, 2020. To the extent SMM has complete time records for Ms. Argueta and simply failed to produce them, SMM would be in violation of Sections 226(c) and 1198.5.³

Due to SMM's failure to maintain accurate payroll and time records, Ms. Argueta and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 204

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

During the relevant time period, SMM did not pay Ms. Argueta and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

Ms. Argueta and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

³ Ms. Argueta and other Aggrieved Employees would be entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1198.5(k) and/or 2699(a), (f), and (g).

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 10 of 13

Violation of California Labor Code Sections 201 and 202

California Labor Code sections 201-202⁴ provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

SMM did not pay Ms. Argueta and other Aggrieved Employees who are no longer employed by SMM all their earned wages at the time of discharge, or within seventy-two hours of their leaving SMM's employ in violation of California Labor Code sections 201-203. For example, Ms. Argueta was terminated on or about October 15, 2020. However, SMM did not tender Ms. Argueta's final wages until on or after October 22, 2020 – at least seven days later. Additionally, SMM has a company-wide policy and/or practice of providing paychecks on the 7th and 22nd of each month. Upon information and belief, SMM also has a company-wide policy and/or practice of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201-203.

Furthermore, SMM did not pay Ms. Argueta and other Aggrieved Employees who are no longer employed by SMM all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Ms. Argueta's employ including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

As a result of SMM's violations of Labor Code sections 201-203, Ms. Argueta and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 2800 and 2802 and California Code of Regulations Title 8, Section 11040 Subdivision 9

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code sections 2800 and 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). Wage Order No. 4 provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain

⁴ Ms. Argueta also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 11 of 13

hand tools and equipment customarily required by the trade or craft.” Cal. Code Regs. tit. 8 § 11040, subd. 9(B).

During the relevant time period, SMM, on a company-wide basis, required that Ms. Argueta and other Aggrieved Employees utilize their own personal cell phones to carry out their job duties, but SMM did not reimburse them for the costs of their cell phone plans and data charges. For example, Ms. Argueta and other Aggrieved Employees were required to download a third-party timekeeping app onto their phones that they were required to use to clock in and clock out for shifts. Ms. Argueta was also required to keep her personal cellular phone with her at all times while at work, including during meal periods and rest periods, in order to carry out her duties such as communicating with management or customers and clients regarding work-related matters. Although SMM required Ms. Argueta and other Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, SMM did not reimburse its employees for this cost. SMM could have provided Ms. Argueta and other Aggrieved Employees with the actual tools and materials required for use on the job, including company phones or physical time clocks, but instead, SMM passed this operating cost off onto Ms. Argueta and other Aggrieved Employees.

SMM’s policy, practice and/or procedure of passing its operating costs on to Ms. Argueta and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Ms. Argueta and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198 and 2810.5(a)(1)

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

On information and belief, SMM did not provide Ms. Argueta and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1).

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 12 of 13

As discussed above, SMM produced Ms. Argueta's employment records and personnel file pursuant to Labor Code sections 226(c) and 1198.5. Absent from Ms. Argueta's employment records and personnel file was a Section 2810.5 notice. SMM's failure to provide Ms. Argueta and other Aggrieved Employees with written notice of basic information regarding their employment with SMM is in violation of Labor Code section 2810.5. Ms. Argueta and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code Section 558(a)

Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid 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."⁵ Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SMM, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Argueta's and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

* * *

Accordingly, Ms. Argueta seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Argueta, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against SMM for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 and Wage Order No. 4.

Therefore, on behalf of all aggrieved employees, Ms. Argueta seeks all applicable penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

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

⁵ Ms. Argueta does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

LAW OFFICES OF
MARK YABLONOVICH

Re: *Sara Argueta v. SMM Facilities, Inc.*

March 26, 2021

Page 13 of 13

Mark Yablonovich
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9595 Wilshire Boulevard, Suite 900
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(310) 286-0246

Best Regards,



Mark Yablonovich

Copy to: SMM Facilities, Inc. (via U.S. Certified Mail)

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511

CERTIFIED MAIL



7015 0640 0007 1027 7955

SMM Facilities, Inc.
542 E. Brokaw Road
San Jose, CA 95112

US POSTAGE
FIRST-CLASS
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FROM 90212



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

SMM Facilities, Inc.
542 E. Brokaw Road
San Jose, CA 95112



9590 9402 5803 0034 3251 02

2. Article Number (Transfer from service label)

7015 0640 0007 1027 7955

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
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- Complete items 1, 2, and 3.
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1. Article Addressed to:

JMM Facilities, Inc.
542 E. Brokaw Road
San Jose, CA 95112



9590 9402 5803 0034 3251 02

2. Article Number (Transfer from service label)

7015 0640 0007 1027 7955

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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