

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 02 2021

Sherri R. Carter, Executive Officer/Clerk of Court

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann (SBN 229832)
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **FOR THE COUNTY OF LOS ANGELES**

13 LETICIA MARTINEZ, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 CURATIVE LLC, a California limited
18 liability company; CURATIVE, INC., a
19 California corporation; CURATIVE LABS,
20 INC., a California corporation; and DOES 1-
21 10, inclusive.

22 Defendants.

CASE NO: **21STCV20778**

PLAINTIFF'S CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:

- (1) FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1197);
- (2) FAILURE TO PAY OVERTIME (LABOR CODE § 510);
- (3) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
- (4) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE § 226);
- (5) WAITING TIME PENALTIES (LABOR CODE § 201 – 203);
- (6) FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 204, 210)
- (7) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204);
- (8) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5); AND

DEMAND FOR JURY TRIAL

1 Plaintiff Leticia Martinez (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public, against Defendants Curative LLC, Curative, Inc., Curative Labs, Inc.
8 and DOES 1 to 100 (“Defendants”) for (1) failure to pay minimum wages for all hours worked; (2)
9 failure to pay overtime wages; (3) failure to reimburse business expenses incurred to its current
10 and former employees in California; (4) failure to provide complete wage statements to its current
11 and former employees in California within the one year prior to the filing of this Complaint; (5)
12 failure to pay all wages due to former employees based on the foregoing; (6) failure to pay timely
13 wages to employees based on the foregoing; (7) unfair business practices based on the foregoing;
14 and (8) PAGA and other penalties based on the foregoing. As a result of the foregoing,
15 Defendants have violated California statutory laws as described below.

16 2. The “Class Period” is designated as the period from four years prior to the filing of
17 this action through the trial date. The PAGA Period is one year from the sending of Plaintiff’s
18 PAGA letter to the LWDA (i.e., from April 26, 2020) through the present and on-going.
19 Defendants’ violations of California’s wage- hour laws and unfair competition laws, as described
20 more fully below, have been ongoing throughout the Class Period and PAGA Period.

21 **VENUE**

22 3. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many of the putative Class Members were employed and/or performed work during
24 the Class Period by Defendants in Los Angeles County. Defendants provide testing, vaccinations,
25 and other essential health services in the county of Los Angeles. Many of the acts alleged herein
26 including Defendants’ failure to pay minimum wages and overtime wages, its failure to issue
27 complete and accurate wage statements, its failure to pay wages on a timely basis, and its failure to
28 reimburse for business expenses, occurred in Los Angeles County. Moreover, the majority of the

1 services provided by Defendants are provided in Los Angeles County. Venue is therefore proper in
2 Los Angeles County.

3 **JURISDICTION**

4 4. Defendants are within the jurisdiction of this Court. Defendants conduct business
5 by providing testing, vaccinations, and other essential health services in California. Thus,
6 Defendants have obtained the benefits of the laws of the State of California. In addition, Plaintiff
7 asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely
8 on, and arising from, California law. The claims of the class are also based solely on California
9 law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys'
10 fees, is less than \$5 million. Therefore, jurisdiction is appropriate in Los Angeles County Superior
11 Court.

12 **THE PARTIES**

13 5. Plaintiff is a California resident who worked for Defendants as a call center
14 employe during the relevant time period, from the end of November 2020 and into 2021.

15 6. From at least four years from the filing of this complaint through the present, and
16 on-going, Defendants' employees, at various times throughout the Class Period, including
17 Plaintiff during his employment, were not paid all minimum wages and overtime wages owed for
18 all working time; were not provided accurate and/or complete wage statements; were not
19 reimbursed for all business expenses; did not receive timely wages; and did not receive all of their
20 wages due upon termination of employment.

21 7. Plaintiff represents the state of California and the following group of aggrieved
22 employees defined as:

23 Plaintiff and all other California residents who are or were employed by Defendants, as
24 hourly-paid employees, and who worked at least one pay period in California from one
year ago and ongoing (hereinafter referred to as "Aggrieved Employees").

25 8. Plaintiff also seeks to represent a Class defined as:

26 Plaintiff and all other California residents who are or were employed by Defendants, as
27 hourly-paid employees, and who worked at least one shift in California during the Class
28 Period (hereinafter referred to as the "Class" or "Class Members").

9. Defendant Curative LLC is a California limited liability company doing business in Los Angeles County. Defendant Curative LLC provides testing, vaccinations, and other essential health services throughout California.

10. Defendant Curative, Inc. is a California limited liability company doing business in Los Angeles County. Defendant Curative, Inc. provides testing, vaccinations, and other essential health services throughout California.

11. Defendant Curative Labs, Inc. is a California limited liability company doing business in Los Angeles County. Defendant Curative Labs, Inc. provides testing, vaccinations, and other essential health services throughout California.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

14. Defendants employed Plaintiff, the Class, and the Aggrieved Employees as non-exempt, hourly-paid employees in California at various times during the Class Period and PAGA Period. On information and belief, Defendant employed approximately seven hundred current and former hourly-paid call center employees in California during the Class Period, and over 1,300 nurses and field operations personnel during the Class Period.

FACTUAL ALLEGATIONS

15. Defendants operate and, at all times during the Class Period and PAGA Period,

1 have done business in California providing testing, vaccinations, and other essential health services
2 in California. Defendants, in the course of operating their business in California during the Class
3 Period and PAGA Period, employed Plaintiff, the Class, and the Aggrieved Employees as hourly-
4 paid workers.

5 16. Labor Code § 1197 states the California requirement that employees must be paid at
6 least the minimum wage fixed by the Commission or by any applicable state or local law, and any
7 payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any
8 employee receiving less than the legal minimum wage...to recover in a civil action the unpaid
9 balance of the full amount of this minimum wage.” IWC Wage Order No. 17-2001 obligates
10 employers to pay each employee minimum wages for all hours worked.

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

15 18. Defendants required Plaintiff, the Class, and all Aggrieved Employees to regularly
16 perform work-off-the-clock for which they did not receive any compensation. Specifically, as part
17 of the Class’ and Aggrieved Employees’ employment, from March 2020 to the present,
18 Defendants required Plaintiff, the Class, and all Aggrieved Employees to undergo pre-shift, off-
19 the-clock COVID-19 testing, when entering Defendants’ premises and/or before starting work.
20 The COVID-19 testing took place daily and took twenty to thirty minutes to complete. Although
21 Defendants maintained a common policy and practice of requiring Plaintiff, the Class, and the
22 Aggrieved Employees to stand/wait in line and complete COVID-19 testing, Defendants failed to
23 compensate Plaintiff, the Class, and the other Aggrieved Employees for such time.

24 19. Employees must be paid for all “hours worked.” Hours worked is “the time during
25 which an employee is subject to the control of an employer, and includes all the time the employee
26 is suffered or permitted to work, whether or not required to do so.” *See* Wage Order 4-2001, Subd.
27 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t is only
28 necessary that the worker be subject to the control of the employer in order to be entitled to

1 compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under
2 the employer’s control and entitled to compensation when the employer “‘directs, commands or
3 restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

4 20. As the California Supreme Court made clear in *Morillion*, when determining
5 whether an employee’s activity is under the employer’s control entitling him or her to
6 compensation, the touchstone is not whether the employer requires the activity and thus whether
7 employees can avoid it, but the level of control employers exert over employees during the
8 activity: “The level of the employer’s control, *rather than the mere fact that the employer requires*
9 *the employees’ activity is determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added).

10 21. In *Frlekin v. Apple Inc.*, (2020) 8 Cal. 5th 1038, 1051 (citing *Morillion*, 22 Cal.4th
11 at 587) the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the
12 employer’s control over its employees, rather than the mere fact that the employer requires the
13 employees’ activity, is determinative” concerning whether an activity is compensable under the
14 “hours worked” control clause. In *Frlekin*, the California Supreme Court found that time
15 employees spent undergoing bag searches at the end of their shifts was compensable. The Court
16 reasoned its decision by analyzing factors in determining whether an employer has exerted
17 compensable control over employees:

18 We also emphasize that whether an activity is required remains probative in
19 determining whether an employee is subject to the employer’s control. But, at least
20 with regard to cases involving *onsite* employer-controlled activities, the mandatory
21 nature of an activity is not the only factor to consider. We conclude that courts may
22 and should consider additional relevant factors—including, but not limited to, the
location of the activity, the degree of the employer’s control, whether the activity
primarily benefits the employee or employer, and whether the activity is enforced
through disciplinary measures—when evaluating such employer-controlled conduct.

23 *Frlekin* at 1056.

24 22. To be free of the employer’s control for purposes of “hours worked,” the employee
25 must be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th
26 at 583.

27 23. Here, as in *Frlekin*, Defendants’ employees could not avoid Defendants’ pre-shift
28

COVID-19 testing (which took place on Defendants' premises and before they could clock in) and could not then use their time effectively for their own purposes. As such, Defendants exercised compensable control over employees undergoing and who underwent COVID-19 testing pre-shift including their waiting in line, and owes wages to the employees for this time. Notably, there is no de minimis defense for such time. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that the de minimis principle was not applicable in the context of an alleged policy requiring employees to work minutes off the clock routinely; *see also, Frlekin*, 8 Cal. 5th 1038 (February 13, 2020) (hours work is defined 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).

24. Notably, through its policy and practice of requiring Plaintiff, the Class, and the Aggrieved Employees to undergo pre-shift, off-the-clock COVID-19 testing, Defendants clearly violated Labor Code § 1194. As a result of Defendants' policy and practices described above, Defendants regularly failed to pay Plaintiff, the Class, and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197. Accordingly, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants have violated Labor Code §§ 1194 and 1197 with respect to Plaintiff, the Class, and the Aggrieved Employees.

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

1 Plaintiff, the Class, and the other aggrieved employees are entitled to penalties under Labor Code §
2 1199.

3 26. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
4 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the
5 Class, and the other aggrieved employees experienced on a regular basis, are not paid for all hours
6 worked under Labor Code § 1194, the employees may recover minimum wages for the time for
7 which they received no compensation.

8 27. Labor Code § 510 provides that any work in excess of eight hours on any day shall
9 be compensated at the rate of no less than 1.5 times the regular rate of pay.

10 28. On a regular basis, Plaintiff, the Class, and Aggrieved Employees worked more
11 than 8 hours as a result of time spent engaged in pre-shift, off-the-clock COVID-19 testing. The
12 time spent conducting pre-shift, off-the-clock COVID-19 testing was completely uncompensated
13 and resulted in Plaintiff, the Class, and the Aggrieved Employees working shifts longer than eight
14 hours in a day. Therefore, Defendants violated Labor Code §§ 510 and 1198 by failing to pay
15 Plaintiff, the Class, and Aggrieved Employees overtime wages on a regular basis.

16 29. Defendants do not maintain an expense reimbursement policy and/or practice
17 stating that Defendant will affirmatively reimburse Plaintiff, the Class, and the aggrieved
18 employees for their business expenses incurred on behalf of Defendants, including a reasonable
19 portion of monthly cell phone and home internet expenses (for home internet services needed
20 during the pandemic) as required by Labor Code sections 2802(a) and (c) and the holding of
21 *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014). The
22 employer's obligation to reimburse employees for monthly cell phone expenses arises when an
23 employer "knew or should have known" that employees are or were using their cell phones to
24 answer work related COVID-19 questions. See *Stuart v. RadioShack Corp.*, 2009 U.S. Dist. Lexis
25 41658 (N.D. Cal. 2009).

26 30. Specifically, California Labor Code section 2802 requires an employer in California
27 to "indemnify his or her employee for all necessary expenditures or losses incurred by that
28 employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code

1 section 2802(a); *see also* 2802(c) where “necessary” is defined to include all “reasonable” costs.
2 “The elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred
3 losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's
4 discharge of his or her duties, or obedience to the directions of the employer; and (iii) the
5 expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist.
6 LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th
7 554, 568 (2007). “In addition, the employer ‘must either know or have reason to know that the
8 employee has incurred [the] expense.’” *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901
9 (N.D.Cal. 2009). Where an employer has knowledge that employees are incurring a reimbursable
10 expense, the employer must “exercise due diligence to ensure each employee is
11 reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements from his or her
12 employer is not waivable. *See* Cal. Labor Code section 2804; *Edwards v. Arthur Anderson*, 44 Cal.
13 4th 937, 951 (2008).

14 31. Furthermore, under California Labor Code section 2802, employers must reimburse
15 employees for all reasonable work-related expenses, including a reasonable portion of their work-
16 related monthly cell phone expenses, and home internet expenses incurred during the pandemic,
17 regardless of whether or not employees incurred any additional out-of-pocket cost from work-
18 related use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12,
19 2014) (“We hold that when employees must use their personal cell phones for work-related calls,
20 Labor Code section 2802 requires the employer to reimburse them. Whether the employees have
21 cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a
22 reasonable percentage of their cell phone bills.”); *see also Ritchie v. Blue Shield of California*,
23 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of claim
24 processors working from home with section 2802 claims for landline phone reimbursements where
25 their employer required them to work from home and to have a home landline for work).

26 32. Here, Plaintiff, the Class, and the Aggrieved Employees are and were required by
27 Defendants to download a cell phone application called Paycom Payroll App on their personal cell
28 phones as well as authentication software on their smart phones that was necessary to perform

1 their job duties. Additionally, Plaintiff, Class Members, and the Aggrieved Employees who
2 worked at home as Customer Success Specialists were required to use their home internet to
3 perform their job duties and were required to clock in and out of their shifts on their personal cell
4 phones through the Paycom Payroll website. Defendants did not affirmatively reimburse Plaintiff,
5 Class Members, and the aggrieved employees in any amount a reasonable portion of such cell
6 phone and home internet expenses incurred throughout the Class and PAGA Periods. Defendants
7 also did not provide wi-fi hotspots or any other way to access the companies' servers.

8 33. In short, Defendants' policies and/or practices require and expect, and/or with
9 Defendants' knowledge thereof permit, Plaintiff, Class Members, and the aggrieved employees to
10 pay for cell phone and home internet expenses incurred in direct consequence of discharging their
11 duties on behalf of Defendants, without reimbursement in full by Defendants for such expenses.
12 Defendants have maintained their policies and/or practices of denying reimbursement in full of
13 Plaintiff's, Class Member's and the aggrieved employees' necessarily incurred business expenses,
14 or substantially similar policies, throughout California and throughout the Class and PAGA
15 Periods.

16 34. Defendants are aware or should have been aware that Plaintiff, Class Members, and
17 the aggrieved employees regularly incur and have incurred cell phone and home internet business
18 expenses in the discharge of their duties, since they required Plaintiff, Class Members, and all
19 Aggrieved Employees to download a cell phone application, by virtue of Defendants' instructions
20 to Plaintiff, Class Members, and the aggrieved employees. Furthermore, Class Members and
21 Aggrieved Employees in the position of Customer Success Specialist were required to use their
22 home internet to perform their job duties. Defendants nevertheless have, throughout the Class and
23 PAGA Periods, failed and refused to reimburse Plaintiff, Class Members, and the aggrieved
24 employees for a reasonable portion of such cell phone and home internet business expenses
25 incurred by them in connection with their work.

26 35. As to Plaintiff, the Wage Statement Subclass, and all aggrieved employees,
27 Defendant also failed to provide accurate itemized wage statements in accordance with Labor
28 Code § 226(a).

1 36. In 2021, Defendants knowingly and intentionally issued wage statements to
2 Plaintiff, Wage Statement Subclass Members and all aggrieved employees that failed to include
3 the name of the legal entity that is the employer.¹ Defendants' 2021 wage statements state
4 Curative, Inc. as the employer; however, Curative, Inc. cannot be found on the California
5 Secretary of State as a registered entity. Plaintiff believes the correct employment entity is either
6 Curative LLC or Curative Labs, Inc., both registered with the California Secretary of State.
7 Furthermore, Defendants' 2021 wage statements and attached check vouchers contain two
8 different addresses: 430 South Cataract Avenue, San Dimas, California 91773 on the wage
9 statement and 1600 Adams Drive, Suite 105, Menlo Park, California 94025 on the check voucher.
10 Lastly, Defendants often issued wage statements that failed to include the rate of pay. *See e.g.*,
11 **Exhibit A**, wage statement dated January 31, 2021.

12 37. Additionally, Defendants knowingly and intentionally failed to record time for and
13 pay Plaintiff, Class Members, and all aggrieved employees all minimum and overtime wages
14 associated with pre-shift, off-the-clock COVID-19 testing. Thus, all wage statements contained
15 inaccurate hours worked and wages earned information. Moreover, Plaintiff, Wage Statement
16 Subclass Members and all aggrieved employees also suffered legal "injury" for purposes of Labor
17 Code section 226(e) insofar as they were unable to readily and easily determine the information
18 required to be set forth by Section 226(a). Specifically, Plaintiff, Wage Statement Subclass
19 Members, and the aggrieved employees were unable to determine the actual and accurate total
20 hours worked by the employees, the gross wages earned, the net wages earned, since time spent on
21 COVID-19 testing and waiting in line was always done off the clock and pre-shift.

22 38. Plaintiff, the Wage Statement Subclass and the aggrieved employees will prevail on
23 their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or
24 willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a
25 plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
26 have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1).");
27

28 ¹ A sample of Defendants' 2021 wage statements, with attached check vouchers, is attached hereto as **Exhibit A**.

1 *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the
2 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
3 226(a).”).

4 39. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
5 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
6 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
7 each violation in a subsequent citation, for which the employer fails to provide the employee a
8 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
9 explained in detail above, Defendants failed to provide Plaintiff, Wage Statement Subclass
10 Members, and the other aggrieved employees with accurate itemized wage statements.
11 Accordingly, Plaintiff, Wage Statement Subclass Members, and the other aggrieved employees
12 may recover Labor Code § 226.3 penalties under PAGA for Defendants’ violations of Labor Code
13 § 226(a) in addition to the normal penalties provided for in Section 226.

14 40. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in advance
16 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
17 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
18 wages are paid not more than seven calendar days following the close of the payroll period.”

19 41. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees on a timely
20 and bi-monthly basis for all applicable minimum and overtime wages, Defendants failed to timely
21 pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the
22 payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

23 42. Pursuant to Labor Code Section 210, as amended,

24 (a) In addition to, and entirely independent and apart from, any other penalty
25 provided in this article, every person who fails to pay the wages of each employee as
26 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
27 shall be subject to a penalty as follows:

28 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee.

(2) For each subsequent violation, or any willful or intentional violation, two
hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of

1 the amount unlawfully withheld.

2 (b) The penalty shall either be recovered by the employee as a statutory
3 penalty pursuant to Section 98 or by the Labor Commissioner as a civil
4 penalty through the issuance of a citation or pursuant to Section 98.3. The
5 procedures for issuing, contesting, and enforcing judgments for citations
6 issued by the Labor Commissioner under this section shall be the same as
7 those set forth in subdivisions (b) through (k), inclusive, of Section 1197.1.

8 (c) An employee is only entitled to either recover the statutory penalty
9 provided for in this section or to enforce a civil penalty as set forth in
10 subdivision (a) of Section 2699, but not both, for the same violation.

11 43. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
12 210 for Defendant's violations of Labor Code Section 204.

13 44. Under Labor Code §§ 201-202, an employer must provide an employee wages at
14 the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
15 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or
16 who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code
17 § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

18 45. As described in detail above, Defendants failed to pay Plaintiff and Class Members,
19 and other aggrieved employees whose employment with Defendants has now ended, all wages
20 owed, including but not limited to minimum and overtime wages for COVID-19 testing time pre-
21 shift within the time constraints proscribed in Labor Code §§ 201-202 at the time of their
22 termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and
23 Class Members and all aggrieved employees left their employment with Defendants without being
24 compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§
25 201, 202, 203.

26 46. The administrative prerequisites of PAGA have been satisfied and Plaintiff has also
27 paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

28 47. Plaintiff by this action seeks to recover, on behalf of herself and all other current
and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*

1 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

2 **CLASS ACTION ALLEGATIONS**

3 48. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
4 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
5 composed of and defined as: Plaintiff and all other California residents who are or were employed
6 by Defendants, as hourly, non-exempt employees, and who worked at least one shift in California
7 during the Class Period (hereinafter “Class Members”). All such Class Members were subject to
8 Defendants’ unlawful policies including, Defendant’s failure to pay minimum wages and overtime,
9 Defendant’s failure to issue compliant wage statements, Defendants’ failure to pay timely and final
10 wages, and Defendant’s failure to reimburse for out-of-pocket business expenses.

11 49. This action has been brought and may properly be maintained as a class action
12 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
13 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
14 Class:

15 a. Numerosity: The potential members of the Class as defined are so
16 numerous that joinder of all the members of the Class is impracticable. While the precise number
17 of Class Members has not been determined at this time, Plaintiff is informed and believes that
18 Defendant has employed approximately seven hundred, if not thousands of Class Members as
19 hourly-paid workers in California who were subject to Defendants’ unlawful compensation, wage
20 statement, final pay, and reimbursement policies. The Class Members are dispersed throughout
21 California. Joinder of all members of the proposed classes is therefore not practicable.

22 b. Commonality: There are questions of law and fact common to Plaintiff and
23 the Class that predominate over any questions affecting only individual members of the Class.
24 These common questions of law and fact include, without limitation:

25 i. Whether Defendants violated sections 1194 and 1197 of the Labor Code by
26 failing to pay minimum wages for all hours worked, including for pre-shift time associated with
27 COVID-19 tests;

28 ii. Whether Defendants violated section 510 of the Labor Code by failing to

1 pay Plaintiff and the Class all overtime wages owed for all overtime hours worked during the Class
2 Period;

3 iii. Whether Defendants violated Labor Code section 2802 by failing to reimburse
4 Plaintiff and the Class for their business expenses incurred during the Class Period;

5 iv. Whether Defendants failed to provide Plaintiff and the members of the Class
6 compliant wage statements in violation of Labor Code Section 226(a);

7 v. Whether Defendants violated Section 203 of the Labor Code by failing to pay
8 members of the Waiting Time Penalty Subclass for all wages due to them (including all minimum
9 wages and overtime) upon their separation of employment from Defendants;

10 vi. Whether Defendants violated Sections 204 and 210 of the Labor Code by
11 failing to pay member of the Class all wages due on a timely basis;

12 vii. Whether Defendants engaged in an unfair practice and violated section
13 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
14 of the Class all minimum wages and overtime wages owed and by failing to reimburse them for
15 their business-related expenses during the Class Period;

16 viii. Whether Plaintiff and the Class are entitled to restitution under Business and
17 Professions Code § 17200;

18 ix. The proper formula(s) for calculating damages, interest, and restitution
19 owed to Plaintiff and the Class Members;

20 x. The nature and extent of class-wide damages.

21 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
22 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
23 belonging to them, arising out of and caused by Defendants' common course of conduct in
24 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

25 d. Adequacy of Representation: Plaintiff are members of the Class and will
26 fairly and adequately represent and protect the interests of the Class and Class Members.
27 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
28 Plaintiff are competent and experienced in litigating large wage and hour class actions and will

1 devote sufficient time and resources to the case and otherwise adequately represent the Class and
2 Class Members.

3 e. Superiority of Class Action: A class action is superior to other available
4 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
5 Members is not practicable, and questions of law and fact common to the Class predominate over
6 any questions affecting only individual members of the Class. Each Class Member has been
7 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
8 practices. Certification of this case as a class action will allow those similarly situated persons to
9 litigate their claims in the manner that is most efficient and economical for the parties and the
10 judicial system. Certifying this case as a class action is superior because it allows for efficient and
11 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
12 compensation, failure to pay all minimum wages and overtime wages due and non-reimbursement
13 of all work-related expenses, and will thereby effectuate California's strong public policy of
14 protecting employees from deprivation or offsetting of compensation earned in their employment.
15 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
16 or most Class Members to bring individual actions to recover monies unlawfully withheld from
17 their lawful compensation due from Defendant's, due to the relatively small amounts of such
18 individual recoveries relative to the costs and burdens of litigation.

19 **FIRST CAUSE OF ACTION**
20 **FAILURE TO PAY MINIMUM WAGES**
21 **[Cal. Labor Code §§ 1194, 1197]**
22 **On behalf of Plaintiff and the Class**

23 50. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
24 in the preceding paragraphs.

25 51. The actionable period for this cause of action is three years prior to the filing of the
26 Complaint through the present, and on-going until the violations are corrected or the Class is
27 certified.

28 52. Labor Code § 1197 states the California requirement that employees must be paid at
least the minimum wage fixed by the Commission, and any payment of less than the minimum

1 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
2 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
3 minimum wage.” IWC Wage Order 5-2001 also obligates employers to pay each employee
4 minimum wages *for all hours worked*. These minimum wage standards apply to each hour
5 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
6 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
7 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
8 *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

9 53. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and
10 the standard conditions of labor fixed by the commission shall be the maximum hours of work and
11 the standard conditions of labor for employees. The employment of any employee for longer hours
12 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 54. Here, Defendants required Plaintiff and Class Members to regularly perform work-
14 off-the-clock for which they did not receive any compensation. Specifically, as part of the Class’
15 employment, from March 2020 to the present, Defendants required Plaintiff and all Class
16 Members to undergo pre-shift, off-the-clock COVID-19 testing, when entering Defendants’
17 premises. The COVID-19 testing took place daily and took twenty to thirty minutes to complete.
18 Although Defendants maintained a common policy and practice of requiring Plaintiff and the Class
19 to stand/wait in line and complete COVID-19 testing, Defendants failed to compensate Plaintiff
20 and the Class for such time.

21 55. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
22 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,
23 including interest thereon, reasonable attorney’s fees, and costs of suit.

24 56. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code
26 § 1194. Where an employee, such as Plaintiff and the other Minimum Wage Class members and
27 Minimum Wage Aggrieved Employees, is not paid for all hours worked under Labor Code § 1194,
28 the employee may recover minimum wages for the time associated with the overtime for which

1 they received no compensation. See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F.
2 Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated
3 damages under § 1194.2 if they also showed they were paid less than minimum wage]; *accord*
4 *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at
5 *20-21.

6 57. Plaintiff and the other Class Members suffered and continue to suffer losses related
7 to the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
8 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
9 within the jurisdictional limitations of this Court.

10 58. Plaintiff seeks all available remedies for Defendants' violations including, but not
11 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
12 and costs to the extent permitted by law.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES**
15 **[Cal. Labor Code § 510]**
16 **On behalf of Plaintiff and the Class**

17 59. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 60. The actionable period for this cause of action is three years prior to the filing of the
20 Complaint through the present, and on-going until the violations are corrected or the Class is
21 certified.

22 61. Labor Code § 510 provides that any work in excess of eight hours on any day, as
23 well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at
24 the rate of no less than 1.5 times the regular rate of pay.

25 62. Daily, Plaintiff and Class Members worked more than 8 hours as a result of time
26 spent engaged in pre-shift, off-the-clock COVID-19 testing. The time spent conducting pre-shift,
27 off-the-clock COVID-19 testing was completely uncompensated and resulted in Plaintiff and the
28 Class Members working shifts longer than eight hours in a day. Therefore, Defendants violated
Labor Code §§ 510 and 1198 by failing to pay Plaintiff and Class Members overtime wages on a

1 daily basis.

2 **THIRD CAUSE OF ACTION**
3 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
4 **[Cal. Labor Code § 2802(a) and (c)]**
5 **On Behalf of Plaintiff and the Class**

6 63. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
7 in the preceding paragraph.

8 64. The actionable period for this cause of action is three years prior to the filing of the
9 Complaint through the present, and on-going until the violations are corrected or the subclass is
10 certified.

11 65. Under California Labor Code section 2802 requires an employer in California to
12 "indemnify his or her employee for all necessary expenditures or losses incurred by that employee
13 in direct consequence of the discharge of his or her duties." See Cal. Labor Code section
14 2802(a); *see also* 2802(c) where "necessary" is defined to include all "reasonable" costs. "The
15 elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses;
16 (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of
17 his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses
18 were reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D.
19 March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In
20 addition, the employer 'must either know or have reason to know that the employee has incurred
21 [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal.
22 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense,
23 the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1.
24 The right of an employee to expense reimbursements from his or her employer is not
25 waivable. *See* Cal. Labor Code section 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951
26 (2008).

27 66. Furthermore, under California Labor Code section 2802, employers must reimburse
28 employees for all reasonable work-related expenses, including a reasonable portion of their work-
related monthly cell phone expenses, regardless of whether or not employees incurred any

1 additional out-of-pocket cost from work-related use. *See, Cochran v. Schwan's Home Service, Inc.*,
2 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must use their
3 personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
4 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
5 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); see
6 also *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon.
7 Edward Chen) (certifying class of claim processors working from home with section 2802 claims
8 for landline phone reimbursements where their employer required them to work from home and to
9 have a home landline for work).

10 67. Here, Plaintiff and the Class are and were required by Defendants to download a
11 cell phone application called Paycom Payroll App on their personal cell phones as well as
12 authentication software on their smart phones that was necessary to perform their job duties.
13 Additionally, Plaintiff and the Class Members who worked at home as Customer Success
14 Specialists were required to use their home internet to perform their job duties and were required
15 to clock in and out of their shifts on their personal cell phones through the Paycom Payroll
16 website. Defendants did not affirmatively reimburse Plaintiff and the Class in any amount for any
17 such cell phone and home internet expenses incurred throughout the Class and PAGA Periods.
18 Defendants also did not provide wi-fi hotspots or any other way to access the companies' servers.

19 68. Accordingly, Defendants violated Labor Code § 2802 and continue to do so by
20 failing to reimburse Plaintiff and all other Class Members for all work-related charges they
21 incurred in connection with their job duties. By failing to reimburse Plaintiff and the Class for their
22 personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802.

23 **FOURTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
25 **[Cal. Labor Code § 226(a) and (e)]**
On behalf of Plaintiff and the Wage Statement and Penalty Subclass

26 69. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 70. The actionable period for this cause of action is one year prior to the filing of this

1 Complaint through the present, and on-going until the violations are corrected or the subclass is
2 certified. The members of the Class who worked for Defendant during the actionable period for
3 this cause of action constitute the Wage Statement and Penalty Subclass.

4 71. Section 226(a) of the California Labor Code provides, in relevant part:

5 Every employer shall...furnish each of his or her employees...an accurate
6 itemized statement in writing showing (1) gross wages earned, (2) total hours
7 worked by the employee, except for any employee whose compensation is
8 solely based on a salary and who is exempt from payment of overtime under
9 subdivision (a) of Section 515 or any applicable order of the Industrial
10 Welfare Commission, (3) the number of piece-rate units earned and any
11 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
12 deductions, provided that all -deductions made on written orders of the
13 employee may be aggregated and shown as one item, (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid, (7) the
15 name of the employee and only the last four digits of his or her social security
16 number or an employee identification number other than a social security
17 number, (8) the name and address of the legal entity that is the employer and
18 (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee...

20 72. As set forth above, in 2021 2021, Defendants knowingly and intentionally issued
21 wage statements to Plaintiff and all Wage Statement Subclass Members that failed to include the
22 name of the legal entity that is the employer. Defendants' 2021 wage statement state Curative, Inc.
23 as the employer, however, Curative, Inc. cannot be found on the California Secretary of State as a
24 registered entity. Plaintiff believes the correct entity is either Curative LLC or Curative Labs, Inc.,
both registered with the California Secretary of State. Furthermore, Defendants' 2021 wage
statements and attached check vouchers contain two different addresses: 430 South Cataract
Avenue, San Dimas, California 91773 on the wage statement and 1600 Adams Drive, Suite 105,
Menlo Park, California 94025 on the check voucher. Lastly, Defendants often issued wage
statements that failed to include the rate of pay. *See Exhibit A*, wage statement dated January 31,
2021.

25 73. Defendants' violation of Labor Code § 226 was knowing and intentional. *See*
26 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
27 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
28 that it was not providing total hours worked to plaintiff or other employees paid on commission"

1 even though it believed that employees paid solely on commission or commission and salary “are
2 exempt and therefore we do not record hours on a wage statement”).

3 74. As a result of Defendants’ failure to issue compliant wage statements to Plaintiff
4 and the Wage Statement Subclass Members (i.e., those members of the class who were employed
5 by Defendant during the actionable period for this cause of action) in violation of section 226(a) of
6 the California Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled
7 to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not
8 exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the wage
9 statement subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and
10 reasonable attorneys’ fees.

11 **FIFTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES FOR**
13 **FAILURE TO PAY WAGES DUE ON TERMINATION**
14 **[Cal. Labor Code §§ 201-203]**
15 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass**

16 75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
17 in the preceding paragraphs.

18 76. The actionable period for this cause of action is three years prior to the filing of the
19 Complaint through the present, and on-going until the violations are corrected or the subclass is
20 certified. The members of the Class who worked for Defendant during the actionable period for
21 this cause of action constitute the Waiting Time Penalty Subclass.

22 77. Sections 201 and 202 of the California Labor Code require Defendants to pay all
23 compensation due and owing to former employees in the Class during the actionable period for this
24 cause of action, at or around the time that their employment is terminated.

25 78. Section 203 of the California Labor Code provides that if an employer willfully
26 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
27 202, then the employer is liable for penalties in the form of continued compensation up to thirty
28 (30) workdays.

79. Defendant willfully failed to pay Plaintiff and other members of the waiting time

1 penalty Class (i.e., those members of the Class whose employment with Defendants ended the
2 actionable period for this cause of action) who are no longer employed by Defendants all wages
3 owed prior to or upon termination or separation from employment with Defendants as required by
4 California Labor Code §§ 201 and 202, including minimum wages and overtime wages.

5 80. As a result, Defendants are liable to Plaintiff and other members of the waiting time
6 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
7 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
8 Code § 203. *See, e.g.*, DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
9 entitles an employee to recover waiting time penalties).

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
12 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Late Wages Subclass

13 81. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 82. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
16 any employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
18 requirements are deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
19 payroll if the wages are paid not more than seven calendar days after the end of the pay period.

20 83. Due to Defendants’ failure to pay Plaintiff and the Class Members for minimum
21 and overtime wages owed, Defendants violated Labor Code § 204 by failing to pay all wages due
22 within seven (7) days of the close of the payroll period on a regular and consistent basis. *See*
23 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
24 Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims
25 under Labor Code §§ 203 and 204).

26 84. Labor Code § 210 provides that “in addition to, an entirely independent and apart
27 from, any other penalty provided in this article, every person who fails to pay the wages of each
28 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
2 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
4 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
5 entitled to recover penalties under Labor Code § 210.

6 **SEVENTH CAUSE OF ACTION**
7 **UNFAIR COMPETITION LAW VIOLATIONS**
8 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
9 **On Behalf of Plaintiff and the Class**

10 85. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
11 in the preceding paragraphs.

12 86. Section 17200 of the California Business & Professions Code prohibits any
13 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
14 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
15 action for violation of the UCL. Such a person may bring such an action on behalf of herself and
16 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

17 87. Under section 17208 of the California Business and Professions Code, the statute of
18 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
19 this cause of action is four years prior to the filing of this Complaint through the present, and on-
20 going until the violations are corrected or the Class is certified.

21 88. Section 90.5(a) of the Labor Code states that it is the public policy of California to
22 enforce vigorously minimum labor standards in order to ensure employees are not required to work
23 under substandard and unlawful conditions, and to protect employers who comply with the law
24 from those who attempt to gain competitive advantage at the expense of their workers by failing to
25 comply with minimum labor standards.

26 89. As a direct and proximate result of Defendants’ unlawful business practices,
27 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
28 its unlawful, unfair, and/or fraudulent acts and practices.

90. Plaintiff and similarly situated Class Members are entitled to monetary relief

1 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages,
2 overtime, and unreimbursed business expenses due and interest thereon, from at least four years
3 prior to the filing of this complaint through to the date of such restitution, at rates specified by law.
4 Defendants should be required to disgorge all the profits and gains it has reaped and restore such
5 profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

6 91. Through its actions alleged herein, Defendants have engaged in unfair competition
7 within the meaning of section 17200 of the California Business & Professions Code, because
8 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
9 wrongfully denying them minimum wages, overtime, and wrongfully denying them reimbursement
10 for business expenses, and therefore was substantially injurious to Plaintiff and the Class
11 Members.

12 92. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
13 the California Business & Professions Code by violating Section 1194 of the California Labor
14 Code.

15 93. Defendants' course of conduct, act and practice in violation of the California laws
16 mentioned above constitute independent violations of sections 17200 et seq. of the California
17 Business and Professions Code.

18 94. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
19 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

20 95. Plaintiff has assumed the responsibility of enforcement of the laws and public
21 policies specified herein by suing on behalf of themselves and other similarly situated Class
22 Members previously or presently employed by Defendants in California. Plaintiff's success in this
23 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
24 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
25 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff, the LWDA and the PAGA Covered Employees

96. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

97. Plaintiff and the “Aggrieved Employees” under PAGA, i.e., those employees who, during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations of §§ 201, 202, 203, 204, 210, 226(a), 510, 1194, 1197, 1198, and 2802 of the Labor Code bring claims under PAGA. Plaintiff was employed by Defendants during the one year preceding the submission of a PAGA letter to the LDWA on or around April 26, 2021. As such, she seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA.

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

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

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

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

99. The aggrieved employees are all individuals who worked for Defendants as hourly-paid employees in California during the PAGA Period. These employees were subject to the aforementioned Labor Code violations, during the period of time from one year prior to the submission of Plaintiff’s letter to the LDWA on April 26, 2021 through the present and on-going, i.e., from April 26, 2020 to the present.

100. In addition, as set forth above, Defendants failed to provide Plaintiff and all aggrieved employees with wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject

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

5 101. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
6 Defendants’ conduct in refusing to provide itemized wage statements was knowing, intentional, or
7 willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower Inc.* 35 F.
8 Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff]
9 needs to establish is a violation of section 226(a), which she has done, as discussed above.”);
10 *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the
11 purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and
12 need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS
13 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code §
14 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

15 102. Plaintiff seeks to recover the PAGA civil penalties through a representative action
16 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
17 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required. *Id.*,

18 103. Pursuant to Labor Code § 2699.3 (a), on April 26, 2021, Plaintiff gave written
19 notice by certified mail to Defendants, and to the Labor and Workforce Development Agency
20 (“LWDA”) of her claims, including the facts and theories supporting all claims outlined in this
21 Complaint. Accordingly, Plaintiff has or soon will have have fulfilled all administrative
22 prerequisites to the pursuit of her PAGA claim on behalf of herself and all other current and former
23 aggrieved employees of Defendants.

24 JURY DEMAND

25 104. Plaintiff hereby demands trial by jury of his and the Class’ claims against
26 Defendants, except for the PAGA and UCL claims which will be tried to the Court.

27 PRAYER FOR RELIEF

28 Wherefore, Plaintiff, on behalf of herself and the members of the Class, and the LWDA

1 and the Aggrieved Employees, prays for judgment against Defendants as follows:

2 1. An Order than this action may proceed and be maintained as a class action;

3 2. On the First Cause of Action:

4 a. A Declaratory judgment that Defendants have violated California Labor
5 Code sections 1194 and 1197 in failing to pay Plaintiff, the Class and the Aggrieved Employees all
6 minimum wages due;

7 b. An award to Plaintiff and the other members of the Class in the amount of
8 their unpaid minimum wages owed, plus interest and/or liquidated damages during the Class
9 Period, as well as attorneys' fees under Labor Code section 1194;

10 3. On the Second Cause of Action:

11 a. A Declaratory judgment that Defendants have violated California Labor
12 Code § 510 in failing to pay Plaintiff, the Class and the Aggrieved Employees all overtime wages
13 due;

14 b. An award to Plaintiff and the other members of the Class in the amount of
15 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
16 during the Class Period, as well as attorneys' fees under Labor Code section 1194;

17 4. On the Third Cause of Action:

18 a. A declaratory judgement that Defendants violated Labor Code § 2802 as to
19 Plaintiff, the Class and the Aggrieved Employees;

20 b. Pursuant to 2802 (a)-(c), reimbursement for all at the unreimbursed business
21 expenses incurred by Plaintiff and the Class, plus interest and attorney's fees.

22 5. On the Fourth Cause of Action:

23 a. A declaratory judgment that Defendants violated California Labor Code
24 §226 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the
25 wage statement subclass members;

26 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for
27 each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent
28 pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of

1 the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code §
2 226(e).

3 6. On the Fifth Cause of Action:

4 a. A declaratory judgment that Defendants violated California Labor Code
5 §§201 through 203 as to former employees in the Class who are the waiting time penalty subclass
6 members;

7 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
8 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'
9 wages per waiting time penalty subclass Class Member.

10 7. On the Sixth Cause of Action:

11 a. A declaratory judgment that Defendants violated California Labor Code §§
12 204 and 210;

13 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Late
14 Wage Subclass for penalties pursuant to Labor Code § 210.

15 8. On the Seventh Cause of Action:

16 a. That the Court find and declare that Defendants have violated the UCL and
17 committed unfair and unlawful business practices by failing to pay minimum wages and overtime
18 and by failing to reimburse Plaintiff and the Class for all their business-related expenses;

19 b. Restitution, including, but not limited to, the relief permitted by sections
20 1194 and 2802 of the California Labor Code (i.e., unpaid minimum and overtime wages owed and
21 reimbursement of all business-related expenses by Plaintiff and the members of the Class during
22 the Class Period).

23 9. On the Eighth Cause of Action:

24 a. A civil penalty against Defendants in the amount of \$100 for the initial
25 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
26 California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in
27 the one year preceding the submission of Plaintiff's LWDA letter through the present and on-going
28 until the violations are corrected or this subclass is certified;

1 b. A civil penalty against Defendants in the amount of \$250 per employee for
2 the initial violation and \$1,000 per employee for each subsequent violation as specified in section
3 226.3 of the California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay
4 periods in the one year preceding the submission of Plaintiff's LWDA letter through the present
5 and on-going until the violations are correct or this subclass is certified;

6 c. An award of reasonable attorney's fees against Defendants as specified in
7 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
8 with the PAGA claims;

9 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
10 connection with Plaintiff's and Class Members' PAGA claim against Defendants, as provided for
11 in Labor Code § 2699(g)(1).

12 10. All other relief as this Court deems proper.

13
14 Dated: June 2, 2020

Respectfully submitted,

15 ACKERMANN & TILAJEF, P.C.

16
17
18 By: _____


Craig Ackermann, Esq.

Counsel for Plaintiff, the Class, and the
Aggrieved Employees

EXHIBIT A

Earnings Statement

LETICIA MARTINEZ

Pay Date:04/09/2021

Period Start:03/22/2021

Period End:04/04/2021

Company: ORK60 - CURATIVE INC

430 S CATARACT AVE

SAN DIMAS CA 91773

Emp #: A1W3

Dept: 200 - Operations

Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	25.00	72.00	1800.00	13602.00	
DOUBLE OVERTIME	50.00	0.00	0.00	48.50	
Overtime	37.50	2.52	94.50	971.63	
General Sick	25.00	8.00	200.00	200.00	
Holiday	0.00	0.00	0.00	600.00	
Gross		82.52	2094.50	15422.13	
W/H Taxes					
Federal W/H(M)			112.77	924.98	
Medicare			29.48	222.70	
Social Security			126.02	952.24	
California State W/H(S/O)			74.07	620.01	
CaliforniaSDI Tax			24.40	184.31	
Deductions					
Benefit Corrections			0.00	-45.60	
Blue Shield Trio HMO			23.84	119.20	
Colonial Disability			22.50	112.50	
Guardian Dental			37.95	189.75	
Medical Credit			0.00	-200.00	
Net Pay			1643.47	12342.04	Voucher No. 303117566DD
Net Pay Distribution					
Direct Deposit Net Check			1643.47	12342.04	A/C:5392
Employee Benefits, Allowances, and Other			Current Period	Year To Date	YTD Taken Available
General Sick Hours			0.00	24.00	8.00 16.00
PTO Hours			2.87	21.34	0.00 21.34

Voucher No. 303117566DD

CURATIVE INC
1600 ADAMS DRIVE SUITE 105
MENLO PARK, CA 94025

DATE: 04/09/2021

Dept: 200

Net Pay: 1643.47

One Thousand Six Hundred Forty Three And 47/100 Dollars

LETICIA MARTINEZ
12812 OAKS AVE
CHINO, CA 91710

For Record Purposes Only
****NON-NEGOTIABLE****

Earnings Statement

LETICIA MARTINEZ

Pay Date: 03/26/2021 Company: ORK60 - CURATIVE INC
 Period Start: 03/08/2021 430 S CATARACT AVE
 Period End: 03/21/2021 SAN DIMAS CA 91773

Emp #: A1W3
 Dept: 200 - Operations
 Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	25.00	80.00	2000.00	11802.00	
DOUBLE OVERTIME	50.00	0.00	0.00	48.50	
Overtime	37.50	2.09	78.38	877.13	
Holiday	0.00	0.00	0.00	600.00	
Gross		82.09	2078.38	13327.63	
W/H Taxes					
Federal W/H(M)			110.84	812.21	
Medicare			29.24	193.22	
Social Security			125.03	826.22	
California State W/H(S/O)			72.66	545.94	
CaliforniaSDI Tax			24.20	159.91	
Deductions					
Benefit Corrections			0.00	-45.60	
Blue Shield Trio HMO			23.84	95.36	
Colonial Disability			22.50	90.00	
Guardian Dental			37.95	151.80	
Medical Credit			0.00	-200.00	
Net Pay			1632.12	10698.57	Voucher No. 300594833DD
Net Pay Distribution					
Direct Deposit Net Check			1632.12	10698.57	A/C:5392
Employee Benefits, Allowances, and Other					
			Current Period	Year To Date	YTD Taken Available
General Sick Hours			0.00	24.00	0.00 24.00
PTO Hours			3.08	18.47	0.00 18.47

CURATIVE INC
1600 ADAMS DRIVE SUITE 105
MENLO PARK, CA 94025

Dept: 200

Net Pay:

One Thousand Six Hundred Thirty Two And 12/100 Dollars

LETICIA MARTINEZ
12812 OAKS AVE
CHINO, CA 91710

Voucher No. 300594833DD

DATE: 03/26/2021

1632.12

For Record Purposes Only
****NON-NEGOTIABLE****

Earnings Statement

LETICIA MARTINEZ

Pay Date: 03/12/2021 Company: ORK60 - CURATIVE INC
 Period Start: 02/22/2021 430 S CATARACT AVE
 Period End: 03/07/2021 SAN DIMAS CA 91773

Emp #: A1W3
 Dept: 200 - Operations
 Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	25.00	80.00	2000.00	9802.00	
DOUBLE OVERTIME	50.00	0.00	0.00	48.50	
Overtime	37.50	1.20	45.00	798.75	
Holiday	0.00	0.00	0.00	600.00	
Gross		81.20	2045.00	11249.25	
W/H Taxes					
Federal W/H(M)			106.83	701.37	
Medicare			28.75	163.98	
Social Security			122.96	701.19	
California State W/H(S/O)			69.72	473.28	
CaliforniaSDI Tax			23.80	135.71	
Deductions					
Benefit Corrections			0.00	-45.60	
Blue Shield Trio HMO			23.84	71.52	
Colonial Disability			22.50	67.50	
Guardian Dental			37.95	113.85	
Medical Credit			0.00	-200.00	
Net Pay			1608.65	9066.45	Voucher No. 298108074DD
Net Pay Distribution					
Direct Deposit Net Check			1608.65	9066.45	A/C:5392
Employee Benefits, Allowances, and Other					
			Current Period	Year To Date	YTD Taken Available
General Sick Hours			0.00	24.00	0.00 24.00
PTO Hours			3.08	15.39	0.00 15.39

CURATIVE INC
1600 ADAMS DRIVE SUITE 105
MENLO PARK, CA 94025

Dept: 200

Net Pay:

One Thousand Six Hundred Eight And 65/100 Dollars

LETICIA MARTINEZ
12812 OAKS AVE
CHINO, CA 91710

DATE: 03/12/2021

Voucher No. 298108074DD

1608.65

For Record Purposes Only
****NON-NEGOTIABLE****

Earnings Statement

LETICIA MARTINEZ

Pay Date: 02/26/2021 Company: 0RK60 - CURATIVE INC
 Period Start: 02/08/2021 430 S CATARACT AVE
 Period End: 02/21/2021 SAN DIMAS CA 91773

Emp #: A1W3
 Dept: 200 - Operations
 Pay Basis: Hourly

		Rate	Hours/Units	Current Period	Year To Date		
Earnings							
	Regular	25.00	80.00	2000.00	7802.00		
	DOUBLE OVERTIME	50.00	0.00	0.00	48.50		
	Overtime	37.50	10.14	380.25	753.75		
	Holiday	25.00	8.00	200.00	600.00		
	Gross		98.14	2580.25	9204.25		
W/H Taxes							
	Federal W/H(M)			176.53	594.54		
	Medicare			37.18	135.23		
	Social Security			158.97	578.23		
	California State W/H(S/O)			122.72	403.56		
	CaliforniaSDI Tax			30.77	111.91		
Deductions							
	Benefit Corrections			-45.60	-45.60		
	Blue Shield Trio HMO			23.84	47.68		
	Colonial Disability			22.50	45.00		
	Guardian Dental			37.95	75.90		
	Medical Credit			0.00	-200.00		
	Net Pay			2015.39	7457.80	Voucher No. 295681485DD	
Net Pay Distribution							
	Direct Deposit Net Check			2015.39	7457.80	A/C:5392	
Employee Benefits, Allowances, and Other							
				Current Period	Year To Date	YTD Taken Available	
	PTO Hours			3.08	12.32	0.00 12.32	

Voucher No. 295681485DD

CURATIVE INC
 1600 ADAMS DRIVE SUITE 105
 MENLO PARK, CA 94025

DATE: 02/26/2021

Dept: 200

Net Pay: 2015.39

Two Thousand Fifteen And 39/100 Dollars

LETICIA MARTINEZ
 12812 OAKS AVE
 CHINO, CA 91710

For Record Purposes Only
****NON-NEGOTIABLE****

Earnings Statement

LETICIA MARTINEZ

Pay Date: 02/12/2021 Company: 0RK60 - CURATIVE INC
 Period Start: 01/25/2021 430 S CATARACT AVE
 Period End: 02/07/2021 SAN DIMAS CA 91773

Emp #: A1W3
 Dept: 200 - Operations
 Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	25.00	79.95	1998.75	5802.00	
DOUBLE OVERTIME	50.00	0.00	0.00	48.50	
Overtime	37.50	2.98	111.75	373.50	
Holiday	0.00	0.00	0.00	400.00	
Gross		82.93	2110.50	6624.00	
W/H Taxes					
Federal W/H(M)			114.69	418.01	
Medicare			29.71	98.05	
Social Security			127.02	419.26	
California State W/H(S/O)			75.48	280.84	
CaliforniaSDI Tax			24.58	81.14	
Deductions					
Blue Shield Trio HMO			23.84	23.84	
Colonial Disability			22.50	22.50	
Guardian Dental			37.95	37.95	
Medical Credit			0.00	-200.00	
Net Pay			1654.73	5442.41	Voucher No. 293133394DD
Net Pay Distribution					
Direct Deposit Net Check			1654.73	5442.41	A/C:5392
Employee Benefits, Allowances, and Other					
PTO Hours			3.08	12.31	YTD Taken Available 0.00 12.31

Voucher No. 293133394DD

CURATIVE INC
 1600 ADAMS DRIVE SUITE 105
 MENLO PARK, CA 94025

DATE: 02/12/2021

Dept: 200

Net Pay: 1654.73

One Thousand Six Hundred Fifty Four And 73/100 Dollars

LETICIA MARTINEZ
 12812 OAKS AVE
 CHINO, CA 91710

For Record Purposes Only
****NON-NEGOTIABLE****

LETICIA MARTINEZ

Pay Date:	01/31/2021	Company: ORK60 - CURATIVE INC	Emp #: A1W3
Period Start:	01/31/2021	430 S CATARACT AVE	Dept: 200 - Operations
Period End:	01/31/2021	SAN DIMAS CA 91773	Pay Basis: Hourly

		Rate	Hours/Units	Current Period	Year To Date	
Earnings						
Regular		0.00	72.13	1803.25	3803.25	
DOUBLE OVERTIME		50.00	0.00	0.00	48.50	
Overtime		0.00	1.74	65.25	261.75	
Holiday		0.00	8.00	200.00	400.00	
	Gross		81.87	2068.50	4513.50	
W/H Taxes						
Federal W/H(M)				141.07	303.32	
Medicare				32.89	68.34	
Social Security				140.65	292.24	
California State W/H(S/O)				94.82	205.36	
CaliforniaSDI Tax				27.22	56.56	
Deductions						
Medical Credit				-200.00	-200.00	
	Net Pay			1831.85	3787.68	Voucher No. 301797436DD
Net Pay Distribution						
Direct Deposit Net Check				1831.85	3787.68	A/C:5392
Employee Benefits, Allowances, and Other				Current Period	Year To Date	YTD Taken Available
PTO Hours				0.00	0.00	0.00 0.00

Voucher No. 301797436DD

CURATIVE INC
1600 ADAMS DRIVE SUITE 105
MENLO PARK, CA 94025

DATE: 01/31/2021

Dept: 200

Net Pay: 1831.85

One Thousand Eight Hundred Thirty One And 85/100 Dollars

LETICIA MARTINEZ
12812 OAKS AVE
CHINO, CA 91710

For Record Purposes Only
****NON-NEGOTIABLE****

LETICIA MARTINEZ

Emp #: A1W3
Dept: 200 - Operations
Pay Basis: Hourly

Voucher No. 290727714DD

DATE: 01/29/2021

Net Pay: 1955.83

One Thousand Nine Hundred Fifty Five And 83/100 Dollars

For Record Purposes Only
****NON-NEGOTIABLE****