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6



AUG 30 2021

By *D. Rusty*
DEPUTY CLERK

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**

10 JOSEPH CRISTOBAL, individually and on
11 behalf of all other similarly situated
employees,

12 Plaintiff,

13 vs.

14
15 BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and
16 DOES 1 to 100, inclusive,

17 Defendants.
18
19
20

Case No. FCS056331

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Rest Period Violations
3. Wage Statement Violations
4. Waiting Time Penalties
5. Unfair Competition
6. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff JOSEPH CRISTOBAL ("Plaintiff"), on behalf of himself and all other similarly
2 situated employees, hereby files this Complaint against Defendants BAT RESIDENTIAL
3 SERVICES, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to pay overtime, rest period violations, wage statement violations, waiting time
8 penalties, and unfair competition.

9 **JURISDICTION AND VENUE**

10 2. The Solano County Superior Court has jurisdiction in this matter pursuant to California
11 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
12 California Business and Professions Code, and Wage Order No. 5.

13 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
14 the wrongful acts and violations of law asserted herein occurred within Solano County and Defendants'
15 obligation to pay wages arose in Solano County pursuant to *Madera Police Officers Assn. v. City of*
16 *Madera*, 36 Cal.3d 403, 414 (1984) and *Crestwood Behavioral Health, Inc. v. Sup. Ct.*, 60 Cal. App. 5th
17 1069 (2021).

18 4. Plaintiff Joseph Cristobal has sought permission pursuant to California Labor Code
19 section 2699 et seq. to pursue the claims set forth in this Complaint against Defendants as a Private
20 Attorney General on behalf of himself and other Aggrieved Employees. Pursuant to California Labor
21 Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce
22 Development Agency ("LWDA") on approximately April 2, 2021. Plaintiff provided facts and legal
23 bases for her claims within the notice to the LWDA on all violations asserted under the Private
24 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The April 2, 2021
25 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has
26 not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all
27 administrative remedies pursuant to the Private Attorneys General Act ("PAGA") as to Defendants and
28 may bring this action on behalf of herself and all similarly situated employees, i.e., Aggrieved

Employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California from April 2, 2020 to the present.

PARTIES

5. JOSEPH CRISTOBAL is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges that BAT RESIDENTIAL SERVICES, INC. is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Fifth Causes of Action on behalf of himself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 all non-exempt employees who have worked, or continue to work, for
6 Defendants in California from April 5, 2017 to the present.

7 13. This action has been brought and may be properly maintained as a class action,
8 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
9 defined community of interests in the litigation and the proposed class is easily ascertainable.

10 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
11 is impracticable under the circumstances of this case. While the exact number of class
12 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
13 Defendants have employed as many as fifty (50) individuals falling within the above
14 stated class definition throughout the State of California during the applicable statute of
15 limitations, who were subjected to the policies and practices outlined in this Complaint.
16 As such, joinder of all members of the putative class is not practicable.

17 (b) Common Questions Predominate: Common questions of law and fact exist as to all
18 members of the putative class and predominate over questions that affect only individual
19 members of the class. These common questions of law and fact include, without
20 limitation, the following:

- 21 (1) Whether Defendants had a policy and/or practice of paying Plaintiff and putative
22 class members overtime wages at 1.5x their lowest hourly base rate of pay rather
23 than calculating a regular rate of pay to incorporate the value of nondiscretionary
24 bonuses and multiple hourly rates of pay paid within the same workweek;
- 25 (2) Whether Defendants had a policy and/or practice of paying Plaintiff and putative
26 class members paid sick time at their lowest hourly base rate of pay rather than
27 calculating a regular rate of pay to incorporate the value of nondiscretionary
28 bonuses and multiple hourly rates of pay paid within the same workweek;

- (3) Whether Defendants had a policy and/or practice that failed to incorporate the value of nondiscretionary remuneration, such as bonuses, and multiple rates of pay into the calculation of Plaintiff's and putative class members' regular rates of pay;
- (4) Whether Defendants had a policy and/or practice of requiring Plaintiff and putative class members to remain on the premises and on duty during their rest periods;
- (5) Whether as a result of Defendants' policies and/or practices Plaintiff and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (6) Whether Defendants provided Plaintiff and putative class members with wage statements that complied with Labor Code section 226.
- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who worked overtime and earned paid sick time in the same workweek they earned nondiscretionary remuneration and/or were paid multiple hourly rates of pay and were required to take their rest periods on Defendants' premises while on duty resulting in the failure to pay overtime, unfair competition, and rest period violations. Additionally, for the reasons described above and because an incorrect address was stated on Plaintiff's and putative class members wage statements, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.
- (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the

putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

- (e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Defendants run residential care facilities in multiple cities in California, including Vacaville, Santa Rosa, Concord, Newark, Hayward, and San Leandro, to care for individuals with developmental disabilities. Plaintiff was employed by Defendants as a non-exempt employee at their Vacaville facility from approximately June 22, 2020 to February 16, 2021; however, the last day he performed work for Defendants was on or about January 13, 2021. Similarly situated employees also worked for Defendants within the last four years as non-exempt employees.

17. Defendants regularly required Plaintiff and similarly situated employees to work overtime hours (*i.e.*, eight (8) hours in a day and/or forty (40) hours in a week). For example,

1 Defendants' 11/8/20 to 11/21/20 wage statement for Plaintiff reflects that Plaintiff worked six (6) hours
2 of overtime during that pay period and Defendants' 7/19/20 to 8/1/20 wage statement for Plaintiff
3 reflects that Plaintiff worked twelve (12) hours of overtime during that pay period. Defendants' time
4 records also reflect that Plaintiff worked ten (10) hours on 11/11/20 and forty-four (44) hours during the
5 11/8/20 to 11/14/20 workweek. Plaintiff is informed and believes that similarly situated employees
6 regularly worked similar schedules and earned overtime wages.

7 18. Plaintiff worked in two different roles during his employment – Direct Support
8 Professional and Lead. Plaintiff earned a different hourly rate performing work as a Direct Support
9 Professional than he did performing work as a Lead. Thus, during some workweeks Plaintiff would earn
10 two different hourly rates of pay. For example, Defendants' 11/8/20 to 11/21/20 wage statement for
11 Plaintiff indicates that he earned \$26.00 per hour for some of the hours he worked and \$28.00 per hour
12 for other hours he worked during the same pay period. Plaintiff believes he earned these different rates
13 of pay within each workweek in the pay period as well. Plaintiff is informed and believes that similarly
14 situated employees also worked in multiple roles for Defendants earning different rates of pay in the
15 same workweek. When Defendants paid Plaintiff and similarly situated employees two different hourly
16 rates of pay within the same workweek, Defendants did not use the weighted average method to
17 calculate Plaintiff's and similarly situated employees' regular rates of pay; rather, Defendants paid
18 overtime at the rate of 1.5x employees' lower base hourly rate. For example, Defendants' 11/8/20 to
19 11/21/20 wage statement for Plaintiff shows that he earned two different hourly rates – \$26.00 per hour
20 and \$28.00 per hour – and was paid overtime at the rate of \$39.00 per hour (\$26.00 x 1.5), rather than a
21 blended overtime rate.

22 19. Additionally, Defendants paid Plaintiff and similarly situated employees non-
23 discretionary remuneration, such as bonuses in the same workweeks they worked overtime hours.
24 However, Defendants failed to incorporate the value of nondiscretionary bonuses into employees'
25 regular rates of pay for the purpose of paying overtime wages. Instead, Defendants paid Plaintiff and
26 similarly situated employees 1.5 x their lower base hourly rate earned during that pay period. For
27 example, Defendants' 12/6/20 to 12/19/20 wage statement for Plaintiff reflects that Plaintiff was paid a
28 nondiscretionary bonus of \$100 and worked four (4) overtime hours that were paid at 1.5x his lower

1 base hourly rate with no adjustment made for the value of his nondiscretionary bonus. Plaintiff is
2 informed and believes that similarly situated employees regularly worked overtime and earned
3 nondiscretionary bonuses within the same workweek but were not paid overtime wages at the correct
4 rate of pay.

5 20. Defendants also paid Plaintiff and similarly situated employees paid sick time during
6 workweeks they earned multiple rates of pay and/or earned nondiscretionary remuneration, such as
7 bonuses. However, Defendants failed to pay Plaintiff's and similarly situated employees' paid sick time
8 at the correct regular rate of pay; instead, paid sick time was compensated at Plaintiff's and similarly
9 situated employees' lower base hourly rate of pay. For example, Defendants' 12/6/20 to 12/19/20 wage
10 statement for Plaintiff reflects that Plaintiff was paid multiple hourly rates of pay (\$26.00 per hour and
11 \$28.00 per hour) and earned a nondiscretionary bonus of \$100 but was compensated for sick time at his
12 lower base rate of \$26.00 per hour rather than a regular rate to account for the multiple rates of pay and
13 value of the nondiscretionary bonus.

14 21. Defendants did not have a policy or practice to authorize and permit Plaintiff and
15 similarly situated employees to take legally compliant rest periods. Defendants' policy and practice was
16 to require Plaintiff and similarly situated employees to remain on the premises and on duty during their
17 rest periods although they were not solely responsible for the supervision of Defendants' clients as there
18 were multiple employees working at any given time. Defendants did not pay Plaintiff and similarly
19 situated employees any rest period premiums.

20 22. As of the date of this Complaint, as a result of Defendants' failure to pay all overtime
21 wages, rest period premiums and paid sick time, Plaintiff and similarly situated employees who have
22 separated from Defendants or have been terminated have unpaid wages owed to them.

23 23. Defendants failed to provide Plaintiff and similarly situated employees with accurate
24 wage statements. The wage statements Defendants issued to Plaintiff and similarly situated employees
25 did not accurately state gross wages earned, net wages earned or all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate. The wage
27 statements also did not accurately state the address of the legal entity that employed Plaintiff and
28 similarly situated employees. The address on the wage statements – 1944 Hidden Valley Dr. Santa

1 Rosa, CA 95404 – did not correspond to any of Defendants' facilities. The address of Defendants'
2 Santa Rosa facility was located at a different address.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(As to all Defendants)**

7 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
8 set forth herein.

9 25. During the period Plaintiff was employed by Defendants, Defendants were required to
10 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
11 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
12 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A);*
13 *Cal. Lab. Code §§ 510, 1194.*

14 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
15 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
16 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
17 worked at their regular rate of pay.

18 27. Plaintiff and similarly situated employees were not exempt from overtime protections
19 employees under the California Wage Orders and Labor Code.

20 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **SECOND CAUSE OF ACTION**
24 **REST PERIOD VIOLATIONS**
25 **(As to all Defendants)**

26 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
27 set forth herein.

28 30. An employer must provide an employee a rest period in accordance with the
applicable Wage Order and California Labor Code section 226.7.

31. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

32. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

33. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at

the place of employment or at a central location within the State of California.

37. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, the wage statements Defendants issued to Plaintiff and similarly situated employees did not accurately state gross wages earned, net wages earned or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. The wage statements also did not accurately state the address of the legal entity that employed Plaintiff and similarly situated employees. As a result, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

38. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully set forth herein.

40. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

41. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

42. Plaintiff and similarly situated employees did not receive all wages, including overtime wages, rest period premiums and all paid sick time at their termination or within the required time after their separation from employment.

43. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

1 44. Defendants knew of their obligation to pay Plaintiff and similarly situated employees
2 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
3 and similarly situated employees earned multiple rates of pay and nondiscretionary bonuses but failed to
4 take these payments into account to calculate Plaintiff's and similarly situated employees' regular rates
5 of pay. Defendants also had knowledge that their policies required Plaintiff and similarly situated
6 employees to unnecessarily remain on the premises and on duty during rest breaks but failed to pay any
7 rest period premiums. Such conduct shows Defendants had knowledge of earned, but unpaid wages at
8 the time of separation, yet Defendants still refused to pay the remaining wages owed.

9 45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
11 thirty (30) days for Defendants' failure to pay all wages due.

12
13 **FIFTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION**
 (As to all Defendants)

15 46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully
16 set forth herein.

17 47. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
18 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
19 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
20 California Business and Professions ("B&P") Code § 17200.

21 48. Plaintiff and similarly situated employees were not paid all wages owed, including
22 overtime wages and paid sick time during their employment or any time thereafter.

23 49. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
24 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
25 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

26 50. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
27 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
28 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

sections 17203, 17208, violations of California Labor Code sections 510, 1194, 246, 246.5, and 248.5 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

SIXTH CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT CLAIMS
(As to all Defendants)

51. Plaintiff incorporated by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Count One- Violation of Labor Code §§510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Count Two- Violation of Labor Code § 226.7 and Wage Order No. 5, §12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Count Three- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Count Four- Violations of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Count Five- Violation of Labor Code §§558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Count Six- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

53. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

2. As to the First Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

4. As to the Third Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

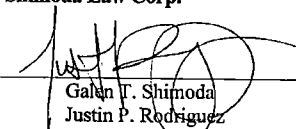
5. As to the Sixth Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in the Labor Code section 2699(f); for any initial violation, one hundred dollars (\$100) for each Aggrieved Employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each Aggrieved Employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

- 1 6. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7
8 Dated: July 28, 2021

Shimoda Law Corp.

9
10 By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On August 26, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 Chris Mead (SBN 115091) 11 Scott Michael McLeod (SBN 242035) 12 Cooper, White & Cooper LLP 13 201 California Street 17th Floor 14 San Francisco, CA 94111 15 Phone: (916) 830-6518 16 Facsimile: (916) 920-4402 17 Email: smcleod@grsm.com 18 cmead@cwclaw.com	
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19 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
20 processing of correspondence for mailing with the United States Postal
21 Service and that each day's mail is deposited with the United States Postal
22 Service that same day in the ordinary course of business. On the date set forth
23 above, I served the aforementioned document(s) on the parties in said action
24 by placing a true copy thereof enclosed in a sealed envelope with postage
25 thereon fully prepaid, for collection and mailing on this date, following
26 ordinary business practices, at Elk Grove, California, addressed as set forth
27 above.

28 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on August 26, 2021, at Elk Grove, California.


Erika F. Collazo

RECEIVED
SOLANO SUPERIOR COURT
2021 AUG 30 AM 10:44

DEPUTY CLERK

A handwritten signature in blue ink, appearing to be "Mr. [illegible]", is written across the bottom of the page.