

CDLP LAW

135 S. STATE COLLEGE BLVD SUITE 200, BREA, CA 92821
Phone: 626.671.7000 | Fax: 877.552.3816 | www.cacdlp.com

1 | Page

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

Re: *Laura Medina and Maria de Lourdes Sandoval Hernandez v. LK Asset Advisors LLC et al*

To: PAGA Administrator, California Labor and Workforce Development Agency ("LWDA")

From: Laura Medina and Maria de Lourdes Sandoval Hernandez

Dear PAGA Administrator:

This office represents Ms. Laura Medina and Ms. Maria de Lourdes Sandoval Hernandez (collectively, "Employees" or "Plaintiffs") in connection with their claims arising under the California Labor Code. Plaintiffs were employees of Harbor Heights Assisted Living & Memory Care ("Harbor Heights"), LK Asset Advisors LLC ("LK Asset"), a Nebraska limited liability company, IBORROW 525 W. La Palma Tenant LLC, a California limited liability company and IBORROW 525 W. La Palma Owner LLC, a California limited liability company. Plaintiffs also contend that Mr. Paul Brown, in his official capacity as an officer, director, or managing agent of Plaintiffs' employers, was personally liable for all civil penalties under Labor Code Section 558.1. For purpose of this notice, Plaintiffs collectively refer to the above mentioned entities and Mr. Paul Brown as "LKA" or "Defendants."

The Defendants may be contacted directly at the addresses below:

HARBOR HEIGHTS ASSISTED LIVING & MEMORY CARE
525 W LA PALMA AVE,
ANAHEIM, CA 92801

LK ASSET ADVISORS LLC
1402 SOUTH 13TH. ST.
OMAHA, NB 68108

IBORROW 525 W. LA PALMA OWNER LLC
12100 WILSHIRE BLVD., SUITE 510
LOS ANGELES, CA 90025

IBORROW 525 W. LA PALMA TENANT LLC
12100 WILSHIRE BLVD., SUITE 510
LOS ANGELES, CA 90025

MR. PAUL BROWN
525 W LA PALMA AVE,
ANAHEIM, CA 92801

Mss. Medina and Sandoval submit this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3 subdivisions (a) and (f), and allege as follows:

Ms. Medina (“Medina”) is a resident of Santa Ana, in Orange County, California and a former employee of the Employers. Defendants hired Ms. Medina as a non-exempt, hourly-paid employee from approximately July 5, 2020 through March 26, 2021. During her employment, Ms. Medina worked at Harbor Heights Assisted Living & Memory Care (“Harbor Heights”), an assisted living facility owned and/or operated by Defendants. From approximately July 5, 2020 through September 26, 2020, Ms. Medina worked as a “Med-Tech” and her regular rate of pay was \$15 an hour. From approximately September 27, 2020 through March 25, 2021, Ms. Medina worked as a “Resident Coordinator” and her regular rate of pay was changed to \$20 an hour. As a Med-Tech, Ms. Medina’s job duties include the preparation, safe-keeping and dispensing of medications to Harbor Heights’ residents. As a Resident Coordinator, her job duties include coordinating residents’ care with doctors’ offices, serving as a liaison between patients’ family and the facility, and executing other tasks for the facility’s general operations.

Ms. Maria de Lourdes Sandoval Hernandez (“Sandoval”) is a resident of Tustin, in Orange County, California and a current employee of Harbor Heights. Defendants hired Ms. Sandoval as a non-exempt, hourly-paid employee since October 1, 2019. During her employment, Ms. Sandoval also worked as a Med-Tech at Harbor Heights and was paid \$15 an hour.

LKA’s Enterprise-Wide and Uniform Payroll Practices

LKA owns, manages and operates assisted living facilities throughout California. Upon information and belief, LKA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Mss. Medina, Sandoval and other aggrieved employees, regardless of their location or position.

Upon information and belief, LKA issues the same formatted wage statements in the same manner for all non-exempt, hourly-paid employees working in California, including Mss. Medina, Sandoval and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, LKA utilized the same methods and formulas when calculating wages due to Mss. Medina, Sandoval and other aggrieved employees in California.

Upon information and belief, LKA and the entities it owns, operates and manages in California, including Harbor Heights, all have interrelation of operations, common management, centralized control of labor relations and common ownership or financial control. As such, LKA and the entities it owns, operates and manages in California are in fact an integrated enterprise and should be treated as a single employer for purpose of PAGA claims.

Specifically, LKA employed nurses, nurse assistants, care givers, janitors, cooks and other non-exempt, hourly-paid employees, with similar job titles and/or job duties, throughout California from on or about November 30, 2019¹ through the present (the “Relevant Period”). LKA’s enterprise-wide uniform policies and procedures regarding Mss. Medina, Sandoval and other similarly aggrieved employees have violated, and continue to violate Labor Code sections 201-203, 204, 210, 216, 218.5, 218.6, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1,

¹ The one-year statute of limitation for PAGA claims was tolled from April 6, 2020 through October 1, 2020 per Cal. Rules of Court, Emergency Rule 9. The statute began to run from October 2, 2020, and this period of 10.2.2020—5.26.2021 has 236 days. The remaining 129 days ran from November 30, 2019 through April 6, 2020.

1198, 280 and Wage Order Regulating Wages, Hours, and Working Conditions in the Transportation Industry, California Code Regulations., tit. 8, § 11090 (“Wage Order No. 5”).

The following is a summary of the violations.

I. Failure to Pay All Hours Worked/Off-The-Clock Work/Minimum Wages In Violation of California Labor Code Sections 221, 223, 224, 1197, 1197.1, 1194, 1198 and Cal. Code Regs., tit. 8, § 11090.

Wage Order No. 5–2001, subdivision 4(B) provides as follows: “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” *Cal.Code Regs., tit. 8, § 11090, subd. (4)(B)*. “Hours worked” is defined in subdivision 2(K) of the wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” *Cal.Code Regs., tit. 8, § 11090, subd. (2)(K)*. Violation of an applicable wage order is also a violation of Labor Code 1198, and Section 2699, subdivision (f) provides for a default civil penalty to violations of Section 1198. *Bright v. 99¢ Only Stores*, 118 Cal.Rptr.3d 723, 729, 189 Cal.App.4th 1472, 1481 (Cal.App. 2 Dist.,2010) (“Nowhere in the Labor Code is a civil penalty specifically provided for violations of [] section 1198. Thus, section 2699, subdivision (f), by its terms, allows for a civil penalty for violations of section 1198 . . .”)

During the Relevant Period, LKA have had a uniform, enterprise-wide policy and practice of requiring its non-exempt, hourly-paid employees to significantly *under-report* their actual, compensable work time.

Take Harbor Heights for example. During the Relevant Period, Harbor Heights intentionally failed to maintain any reliable mechanism to accurately track and record the actual hours worked by its non-exempt employees. Harbor Heights failed to install and maintain any time clock, punch-card system, computer system or other mechanism that would automatically and accurately track and record the employees’ time. Instead, Harbor Heights scheduled times for its employees’ work shifts and breaks, then recorded time and paid wages based strictly on the schedules, even though the schedules did not accurately reflect the actual times the employees spent working.

More specifically, Harbor Heights required its non-exempt employees to *manually record* their time on paper time sheets with strict rules designed to under-compensate the employees, including:

1. No employee is permitted to record any start time that is earlier than the scheduled start time, even if he or she actually starts working before his or her scheduled start time.
2. No employee is permitted to record any end time that is later than the scheduled end time, even if he or she actually continues to work after the scheduled end time.
3. If an employee starts working later than the scheduled start time or ends working earlier than the scheduled end time, the employee must record the actual time.

4. An employee must record a 30-minute lunch break taking before the end of the fifth hour of work, regardless whether the employee actually takes a delayed lunch break, shortened lunch break, or no lunch break at all.

As a result of LKA's uniform, enterprise-wide policy and practice of requiring its employees to *under-record* and *under-report* the actual time they spent working, the employees were not fully compensated for their work time, were not given their full meal and rest breaks or compensated for breaks they were denied, their wage statements were therefore inaccurate, and they were not paid in full on termination. Mss. Medina and Sandoval and other aggrieved employees are entitled to Collect civil penalties under PAGA because of LKA's knowing and willful violation of the pertinent labor code sections.

LKA did not pay minimum wages for all hours worked by Mss. Medina and Sandoval and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, LKA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, LKA regularly failed to pay at least minimum wages to Mss. Medina and Sandoval and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mss. Medina and Sandoval and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

II. Failure to Pay Overtime Premiums.

Under section 510(a) and 1198 of the California Labor Code, and Wage Order No. 5, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek and 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours per workday. Regular rate of pay includes all remuneration for employment paid to or on behalf of the employee including commissions and non-discretionary bonuses.

LKA willfully failed to pay all overtime wages owed to Mss. Medina and Sandoval and other aggrieved employees. During the Relevant Period, Mss. Medina and Sandoval and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, LKA had an enterprise-wide policy and/or practice of requiring Mss. Medina and Sandoval and other aggrieved employees to perform tasks off-the-clock, by strictly limiting overtime hours while assigning heavy workloads to employees. For example, several months into her employment, Ms. Medina was specifically told by Mr. Paul Brown, the executive director of Harbor Heights, that she should not record any overtime on her time sheets. Mr. Brown advised Ms. Medina that she was still expected to perform the same amount of work, but she would only be allowed to record and report a maximum of eight (8) hours per day. LKA knew or should have known that Ms. Medina would not be able to complete all assigned daily tasks within eight (8) hours, and knew that she would have to

perform work off-the-clock in order to meet LKA's expectations. In fact, because of the nature of her work as a Resident Coordinator, Ms. Medina had to respond to inquiries and communications from doctors' offices, facility staff and patients' families whenever she received them, whether it's at midnight, during lunch break, on a holiday or her day off. Ms. Medina considered herself a "24/7 employee" because of the non-stop obligation to respond to phone calls, emails and text messages that were related to work.

Second, during the relevant period, LKA had an enterprise-wide policy of understaffing their job sites. For example, Ms. Sandoval was assigned to take care of approximately 40 patients at any given time. Most often, Ms. Sandoval was the only Med-Tech on duty during her shifts. Due to the lack of coverage caused by understaffing, Ms. Sandoval was only able to take meal breaks in between assignments and she constantly had to overstay her scheduled work time to finish duties assigned to her. LKA's supervisors monitored Ms. Sandoval's and other aggrieved employees' daily performance, to ensure Med-Techs were staying on schedule, which further discouraged and impeded meal breaks and created pressure on Ms. Sandoval and other aggrieved employees to forego meal breaks in order to complete their assigned tasks for the day. Ms. Sandoval would work six (6) or more hours without being able to take a meal break, and when she did, they would be cut short and/or interrupted by calls from supervisors and patients. In addition, LKA did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period.

Third, during the Relevant Period, LKA had an enterprise-wide policy and/or practice of requiring that Mss. Medina and Sandoval and other aggrieved employees to respond to calls from supervisors and management, even during unpaid meal periods. LKA's supervisors and management contacted Mss. Medina and Sandoval and other aggrieved employees on their cellular phones during their meal periods to discuss job assignments. As a result, Mss. Medina and Sandoval and other aggrieved employees suffered missed and interrupted meal periods, and worked during the meal periods without getting paid.

LKA knew or should have known that, as a result of its enterprise-wide policies and/or practices, including understaffing, limiting overtime, failing to schedule meal breaks, and requiring Mss. Medina and Sandoval and other aggrieved employees to respond to calls from management and patients, doctors' offices at all times, Mss. Medina and Sandoval and other aggrieved employees were performing some of their assigned duties during unpaid meal periods and before and after their shifts, and were suffered or permitted to work for which they were not paid. LKA also knew, or should have known, that it did not compensate Mss. Medina and Sandoval and other aggrieved employees for the off-the-clock work and unrecorded overtime hours.

Because Mss. Medina and Sandoval and other aggrieved employees worked shifts of over eight (8) hours a day or more and forty (40) hours a week or more, much of this off-the-clock work performed during unpaid meal periods, worked before and after their scheduled shifts, they were qualified for overtime premium pay.

Fourth, LKA did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, LKA paid other aggrieved employees shift differential pay, incentive pay, and/or nondiscretionary bonuses. However, in violation of the California Labor Code, LKA failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times

when other aggrieved employees worked overtime and received these other forms of pay, LKA failed to pay all overtime wages by paying a lower overtime rate than required.

Therefore, Mss. Medina and Sandoval and other aggrieved employees were owed overtime wages for all of the overtime hours they actually worked and are entitled to recover those unpaid premium overtime wages, as well as civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

III. Failure to Provide Timely, Uninterrupted, Off-Duty Meal Periods In Violation of Labor Code §§ 226.7, 512, 1198, and Wage Order No. 5.

California Labor Code sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided.

Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, the first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated above, during the Relevant Period, LKA had an enterprise-wide policy of understaffing their job sites. For example, Ms. Sandoval was assigned to take care of approximately 40 patients at any given time. Most often, Ms. Sandoval was the only Med-Tech on duty during her shifts. Due to the lack of coverage caused by understaffing, Ms. Sandoval was only able to take meal breaks in between assignments and she constantly had to overstay her scheduled work time to finish duties assigned to her. LKA's supervisors monitored Ms. Sandoval's and other aggrieved employees' daily performance, to ensure Med-Techs were staying on schedule, which further discouraged and impeded meal breaks and created pressure on Ms. Sandoval and other aggrieved employees to forego meal breaks in order to complete their assigned tasks for the day. Ms. Sandoval would work six (6) or more hours without being able to take a meal break, and when she did, they would be cut short and/or interrupted by calls from supervisors and patients. In addition, LKA did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period.

Second, as stated above, during the Relevant Period, LKA had an enterprise-wide policy and/or practice of requiring that Mss. Medina and Sandoval and other aggrieved employees to respond to calls from supervisors and management during unpaid meal periods. LKA's supervisors and management contacted Mss. Medina and Sandoval and other aggrieved employees on their cellular phones during their meal periods to discuss job assignments. As a result, Mss. Medina

and Sandoval and other aggrieved employees suffered missed and interrupted meal periods, and worked during the meal periods without getting paid.

LKA knew or should have known that, as a result of its enterprise-wide policies and/or practices, including understaffing, limiting overtime, failing to schedule meal breaks, and requiring Mss. Medina and Sandoval and other aggrieved employees to respond to calls from management and patients, doctors' offices at all times, Mss. Medina and Sandoval and other aggrieved employees were performing some of their assigned duties during unpaid meal periods.

Furthermore, LKA also has engaged in an enterprise-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mss. Medina and Sandoval and other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that LKA did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because LKA did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Based on the above, LKA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Mss. Medina and Sandoval and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (t)-(g).

IV. Failure to Provide Timely, Uninterrupted, Off-Duty Rest Periods In Violation of Labor Code §§ 226.7, 512, 1198, and Wage Order No. 5.

Applicable IWC Wage Order requires employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. The Wage Order, Labor Code section 226.7 and Regulations also state if an employer fails to provide an employee with rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period was not provided. These remedies are codified under California Labor Code section 226.7.

To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties--including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

As with meal periods, LKA's policies and/or practices, including the requirement that employees responding to phone calls at all times, prevented Mss. Medina and Sandoval and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. As a result, Mss. Medina and Sandoval and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which they were entitled.

LKA also has engaged in an enterprise-wide practice and/or policy of not paying all rest period

premiums owed when compliant rest periods are not provided. Because of this practice and/or policy, Mss. Medina and Sandoval and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that LKA did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because LKA did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Based on the above, LKA failed to provide all rest periods in violation of California Labor Code sections 226.7 and 1198. Mss. Medina and Sandoval and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (t)-(g)."

V. Failure to Reimburse Necessary Business Expenses In Violation of Labor Code § 2802.

Labor Code Section 2802, subdivision(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan 's Home Service, Inc.*, 228 Cal. App. 4th 1137, "1144(2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the Relevant Period, LKA consistently failed to reimburse reasonable business expenses necessarily incurred by Mss. Medina and Sandoval and other aggrieved employees in performance of their duties, in violation of Labor Code section 2802.

For example, Mss. Medina and Sandoval used their personal laptops and cellular phones to conduct company business, paid fees to their cellular phone carriers and internet service providers. Ms. Medina even advanced expenses to pay for holiday decorations used at Harbor Height’s facilities, and bought birthday gifts for to the patients. LKA never reimbursed Mss. Medina and Sandoval and other aggrieved employees for the reasonable and necessary expenses they incurred in direct consequence of the discharge of their duties, even though LKA knew, or should have known Mss. Medina and Sandoval and other aggrieved employees incurred these business expenses.

LKA could have provided Mss. Medina and Sandoval with laptops and cellphones to be used for fulfilling work-related tasks and reimbursed them for the actual expenses reasonably and necessarily incurred for LKA’s business. Instead, LKA passed these operating costs off onto Mss. Medina and Sandoval and other aggrieved employees. Thus, LKA had, and continues to have, an enterprise-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

LKA's policy and/or practice of passing its operating costs on to Mss. Medina and Sandoval and

other aggrieved employees by requiring that they use their personal laptops and cellular phones for business is in violation of California Labor Code section 2802. Mss. Medina and Sandoval and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

VI. Violation of California Labor Code § 204 - Failure to Timely Pay Wages During Employment.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the Relevant Period, LKA failed to pay Mss. Medina and Sandoval and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mss. Medina and Sandoval and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

VII. Failure to Pay All Wages Due Upon Separation of Employment In Violation of Labor Code Section Lab. Code, §§ 201, 202, 203, 204, 216, 218.5, 227.3, 1194.

California Labor Code Section 201 requires “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code Section 202 provides that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.” California Labor Code Section 201 provides “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue

as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

An employer that does not pay its employees the wage required by law when they quit or are fired is liable for both the underpayment of wages and, if the failure to pay is “willful,” a “waiting time” penalty of up to 30 days' wages. *Diaz v. Grill Concepts Services, Inc.*, 233 Cal.Rptr.3d 524, 527, 23 Cal.App.5th 859, 863 (Cal.App. 2 Dist., 2018); *Lab. Code*, §§ 203, *subd. (a)*, 1194, *subd. (a).(f)-(g)*.

During the Relevant Period, LKA willfully failed to pay Ms. Medina and other aggrieved employees who are no longer employed by LKA all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving LKA's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Medina and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

VIII. Failure to Furnish Accurate And Compliant Itemized Wage Statements In Violation of Labor Code §§226, 226.3, 226.7, 512.

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (§226(a)(1)), "net wages earned" (§226(a)(5)), "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee ... " §226(a)(9)) and "the inclusive dates of the period for which the employee is paid." §226(a)(6).

Labor Code Section 226(e) provides if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any subsequent pay period, not to exceed \$4,000 per employee. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, LKA knowingly and intentionally provided Mss. Medina and Sandoval and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LKA issued uniform wage statements to Mss. Medina and Sandoval and other aggrieved employees that fail to correctly list: gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period, including overtime rates of pay; the correct name of the employing entity; and the corresponding number of hours worked at each hourly rate. Specifically, LKA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because LKA deducted time from Mss. Medina and Sandoval and other aggrieved employees' records for meal periods that were short, interrupted, or never actually taken (and therefore time for which they should have been paid) and did not record the time spent Mss. Medina and Sandoval and other aggrieved employees spent working off-the-clock, LKA did not list the correct amount of

gross wages and net wages earned by Mss. Medina and Sandoval and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, LKA failed to accurately list the total number of the hours worked by Mss. Medina and Sandoval and other aggrieved employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate in violation of section 226(a)(9).

In addition, because LKA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime and meal and rest period premium wages, LKA did not list the correct "amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). LKA also failed to correctly list all applicable hourly rates in effect during the pay period, *i.e.*, the correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Because LKA failed to provide the correct net and gross wages earned, total hours worked, and applicable rates of pay on wage statements, Mss. Medina and Sandoval and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mss. Medina and Sandoval and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mss. Medina and Sandoval and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, and/or 2699(a), (f)-(g).

IX. Failure to Maintain Copy of Accurate Itemized Wage Statements In Violation of Labor Code §§ 226.7, 512.

As stated above, LKA failed to accurately track, calculate and pay Mss. Medina and Sandoval and other aggrieved employees for all hours worked, overtime premiums and meal and rest break premiums owed to them. Mss. Medina and Sandoval and other aggrieved employees' wage statements necessarily incorrectly stated their gross and net wages. As a result, Mss. Medina and Sandoval and other aggrieved employees were provided with incompliant statements that failed to comport with California Labor Code section 226 and the Employer failed to maintain copy of accurate itemized wage statements.

Mss. Medina and Sandoval and other aggrieved employees are entitled to collect civil penalties under Labor Code §§ 226.7, 512, and/or 2699(a), (f)-(g).

X. Failure To Keep And Retain Employment Records As Required By Law.

Numerous Labor Code provisions require an employer to keep and retain records pertaining to an employee's employment for certain minimum period of time. For example, Labor Code § 1198.5(c) (requiring an employer to maintain personnel records, defined to include those relating to an employee's performance and grievance concerning the employee for at least three years); Labor Code § 2751 (requiring an employer to maintain the written employment contract if an employee is to be paid by commission); Labor Code § 432 (documents relating to the

obtaining or holding of employment); Labor Code § 1197.5 (records of employee wages and wage rates, job classifications and other terms and conditions of employment for at least two years); Labor Code §§ 1024.5, 432.7, 432.8 (Consumer credit reports or criminal background checks or arrest records of applicants or employees); Labor Code §§ 245, 245.5 (employee records of hours worked, number of paid sick days accrued, number of paid sick days used); Labor Code § 6409 (records for injuries causing loss of work time); Labor Code § 6408(d) (accurate records of employee exposures to potentially toxic materials or harmful physical agents)

Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the Relevant Period, LKA failed, on an enterprise-wide basis, to keep accurate records of meal period start and stop times for Mss. Medina and Sandoval and other aggrieved employees in violation of section 1198.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the Relevant Period, and in violation of Labor Code section 1174(d), LKA willfully failed to maintain accurate payroll records for Mss. Medina and Sandoval and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

Since LKA failed to comply with the record keeping and retention requirement mandated by the Labor Code provisions stated above, Mss. Medina and Sandoval and other aggrieved employees are entitled to collect civil penalties under Labor Code §§ 1174.5, and/or 2699(a), (f)-(g).

XI. California Labor Code§ 558(a).

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” LKA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mss. Medina and Sandoval and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mss. Medina and Sandoval seek the remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5

and 558, Mss. Medina and Sandoval, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against LKA for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mss. Medina and Sandoval seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Mss. Medina and Sandoval represented in this matter by Jiakun Lei of CDLP Law.

Thank you for your attention to this matter. If you have any questions, please contact the undersigned at:

Jiakun Lei
CDLP LAW
135 South State College Boulevard, Suite 200,
Brea, CA 92821
Ph: 626-671-7000 Fax: 877-552-3816
Email: jlei@cacdlp.com

Very truly yours,

Dated: May 26, 2021

CDLP LAW

By: Jiakun Lei
JiaKun Lei, Attorney for Laura Medina and
Maria de Lourdes Sandoval Hernandez

cc: (via Certified Mail)

Mr. Paul Brown
525 W La Palma Ave.,
Anaheim, Ca 92801

cc: (via Certified Mail)

Harbor Heights Assisted Living & Memory Care
525 W La Palma Ave,
Anaheim, Ca 92801

cc: (via Certified Mail)

LK Asset Advisors LLC
1402 South 13th. St.
Omaha, Nb 68108

cc: (via Certified Mail)

Brian Good c/o IBORROW 525 W. La Palma Owner LLC.
12100 Wilshire Blvd., Suite 510
Los Angeles, CA 90025

cc: (via Certified Mail)

Brian Good c/o IBORROW 525 W. La Palma Tenant LLC
12100 Wilshire Blvd., Suite 510
Los Angeles, CA 90025

cc: (via Certified Mail)

CT Corporation System c/o LK Asset Advisors LLC
28 Liberty St.,
New York, NY 10005

cc: (via Certified Mail)

Ms. Barbra Arnold
Jeffer Mangels Butler & Mitchell LLP
2 Embarcadero Center, 5th Floor
San Francisco, CA 94111