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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ESTEBAN ROMAN, WILLIAM FLORES,
MARIA NUNEZ, and MICAH
MATTHEWS, individually and on behalf of
themselves, the State of California, as private
attorneys general, and on behalf of all others
similarly situated,

Plaintiffs,

v.

SANTA ANITA CONVALESCENT
HOSPITAL & RETIREMENT CENTER,
INC., a California corporation doing business
as Santa Anita Convalescent Hospital;
GOLDEN STATE HEALTH CENTERS,
INC., a California corporation doing business
as Santa Anita Convalescent Hospital; and
DOES 1 TO 50,

Defendants.

CASE NO: 21STCV17726

FAXED

*Consolidated with Matthews v. Santa Anita
Convalescent Hospitals & Retirement Center,
Inc., et al., Case No. 21STCV21871*

**FIRST AMENDED CONSOLIDATED
CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Pay Wages Timely during Employment,
6. Failure to Pay All Wages Earned and Unpaid at Separation,
7. Failure to Create, Maintain, and Produce Complete and Accurate Employment Records,
8. Violations of California's Unfair Competition Law,
9. PAGA Penalties

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

1 Plaintiffs Esteban Roman, William Flores, Maria Nunez, and Micah Matthews
2 (collectively "Plaintiffs"), on behalf of themselves, the State of California, as private attorneys
3 general, and all other similarly situated employees within the State of California, complain and
4 allege of defendants Santa Anita Convalescent Hospital & Retirement Center, Inc., Golden State
5 Health Centers, Inc., and Does 1 to 50 (collectively, "Defendants"), and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a class action complaint brought pursuant to California Code of Civil
8 Procedure section 382.

9 2. The "Class Period" as used herein, is defined as the period from May 11, 2017, and
10 continuing into the present and ongoing. Defendants' violations of California's laws as described
11 more fully below have been ongoing throughout the Class Period and are still ongoing.

12 3. Plaintiffs bring this class action on behalf of themselves and the following class:
13 *All individuals who are or were employed by Defendants as non-exempt employees in California*
14 *during the Class Period* (the "Class Members"). (Code Civ. Proc., § 382.)

15 4. Plaintiffs bring this action on behalf of themselves and the Class Members, as a
16 class action, against Defendants for:

- 17 A. Failure to pay all minimum wages,
- 18 B. Failure to pay all overtime wages,
- 19 C. Failure to provide rest periods and pay missed rest period premiums,
- 20 D. Failure to provide meal periods and pay missed meal period premiums,
- 21 E. Failure to pay wages timely during employment,
- 22 F. Failure to pay all wages earned and unpaid at separation,
- 23 G. Failure to create, maintain, and produce complete and accurate employment
24 records, and
- 25 H. Violations of California's unfair competition law.

26 5. This action is also a representative action brought pursuant to the California Labor
27 Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code
28 sections 2698 through 2699.6.

1 6. The “PAGA Period” as used herein, is defined as the period from May 11, 2020,
2 and continuing into the present and ongoing.

3 7. This PAGA action is brought on behalf of Plaintiffs, the State of California as
4 private attorney general, and on behalf of the following aggrieved employees: *All individuals who*
5 *are or were employed by Defendants as non-exempt employees in California during the PAGA*
6 *Period* (the “Aggrieved Employees”).

7 8. Plaintiffs are informed and believe and thereon allege that the California Industrial
8 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order
9 4-2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of
10 Regs., tit. 8, § 11040.) Plaintiffs reserve the right to amend or modify the definition of “Applicable
11 Wage Order” with greater specificity or add additional IWC Wage Orders if additional applicable
12 wage orders are discovered in litigation.

13 **II. JURISDICTION & VENUE**

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

19 10. This Court has personal jurisdiction over Defendants because Defendants have
20 caused injuries in the County of Los Angeles and the State of California through their acts, and by
21 their violation of the California Labor Code and California state common law. Defendants transact
22 millions of dollars of business within the State of California. Defendants own, maintain offices,
23 transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are
24 found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court
25 for purposes of service of process.

26 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
27 the Code of Civil Procedure. Defendants operate within California and do business within Los
28 Angeles County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and

1 all of Defendants' employees identified above within Los Angeles County and surrounding
2 counties where Defendants may remotely operate.

3 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
4 U.S.C. § 1332) as the amount in controversy for Plaintiffs' and the Class Members' claims, in
5 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
6 California. As such, even if the amount in controversy did exceed \$5 million this matter would
7 still not be appropriate for removal under the "local controversy" exception to the Class Action
8 Fairness Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

9 **III. THE PARTIES**

10 **A. PLAINTIFF**

11 13. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
12 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-
13 exempt hourly employees in the County of Los Angeles.

14 14. Plaintiffs bring this action on behalf of themselves and the following class pursuant
15 to section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed*
16 *by Defendants as non-exempt employees in California during the Class Period* (the "Class
17 Members").

18 15. Plaintiffs also bring this action on behalf of themselves and the State of California,
19 as private attorneys general, and on behalf of the following group of aggrieved employees: *All*
20 *individuals who are or were employed by Defendants as non-exempt employees in California*
21 *during the PAGA Period* (the "Aggrieved Employees").

22 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are
23 or were employees of Defendants during the relevant statutory period.

24 **B. DEFENDANTS**

25 17. Plaintiffs are informed and believe and thereon allege that Defendants were
26 authorized to and doing business in Los Angeles County and is and/or was the legal employer of
27 Plaintiffs, the other Aggrieved Employees, and the other Class Members during the applicable
28 statutory periods. Plaintiffs, the other Aggrieved Employees, and the other Class Members were,

1 and are, subject to Defendants' policies and/or practices complained of herein and have been
2 deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204,
3 210, 226.7, 510, 512, 551, 552, 558, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and others
4 that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

5 18. Plaintiffs are informed and believe, and based thereon allege, that during the Class
6 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
7 County of Los Angeles. Defendants operations are headquartered in Los Angeles County.

8 19. Plaintiffs do not know the true names or capacities, whether individual, partner, or
9 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
11 amend this complaint when such true names and capacities are discovered. Plaintiffs are informed,
12 and believe, and thereon allege, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiffs, the other Aggrieved Employees, and the other Class Members
15 to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of
16 herein.

17 20. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
18 herein, Defendants were and/or are the employers of Plaintiffs, the other Aggrieved Employees,
19 and the other Class Members. At all times herein mentioned, each of said Defendants participated
20 in the doing of the acts hereinafter alleged to have been done by the named Defendants.
21 Furthermore, the Defendants, and each of them, were the agents, servants, and employees of each
22 and every one of the other Defendants, as well as the agents of all Defendants, and at all times
23 herein mentioned were acting within the course and scope of said agency and employment.
24 Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the acts
25 or omissions complained of herein.

26 21. At all relevant times, Defendants, and each of them, were members of and engaged
27 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
28 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs are

1 informed, and believe, and thereon allege, that all Defendants were joint employers for all purposes
2 of Plaintiffs, the other Aggrieved Employees, and the other Class Members.

3 **IV. COMMON FACTS & ALLEGATIONS**

4 22. Plaintiffs and the other Class Members (collectively, the “Class Members”) are,
5 and were at all relevant times, employed by the Defendants within the State of California.

6 23. Likewise, Plaintiffs and the other Aggrieved Employees (collectively, the
7 “Aggrieved Employees”) are, and were at all relevant times, employed by the Defendants within
8 the State of California.

9 24. The Class Members and the Aggrieved Employees are, and were, at all relevant
10 times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal
11 periods, and the other claims alleged in this complaint.

12 25. Specifically, Plaintiffs were employed by Defendants within the statutory Class
13 Period and PAGA Period, working as hourly, non-exempt Certified Nursing Assistants and
14 “Staffers” for Defendants. The job duties of the Plaintiffs who were Certified Nursing Assistants
15 included taking vital signs and caring for patients. The job duties of the Plaintiffs who were
16 “Staffers” included managing the schedules for nurses and health care workers.

17 **A. MINIMUM WAGE VIOLATIONS**

18 26. Labor Code section 1197 requires employees to be paid at least the minimum wage
19 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
20 Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to
21 recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise,
22 the Applicable Wage Order also obligates employers to pay each employee minimum wages for
23 all hours worked. (Cal. Code of Regs., tit. 8, § 11040.) Labor Code section 1198 makes unlawful
24 the employment of an employee under conditions that the IWC Wage Orders prohibit.

25 27. These minimum wage standards apply to each hour that employees work.
26 Therefore, an employer’s failure to pay for any particular time worked by an employee is unlawful,
27 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average
28 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

1 28. Here, Defendants failed to fully conform their pay practices to the requirements of
2 the law during the relevant statutory periods. The Class Members and the Aggrieved Employees
3 were not compensated for all hours worked including, but not limited to, all hours they were subject
4 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
5 and the Applicable Wage Order.

6 29. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide
7 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
8 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
9 amount equal to the wages due and interest thereon.

10 30. When employees, such as the Class Members, are not paid for all hours worked
11 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
12 they received no compensation. (See *Sillah v. Command International Security Services* (N.D.
13 Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover
14 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than
15 minimum wage].)

16 31. Labor Code section 1197.1 authorizes employees who are paid less than the
17 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,
18 among other damages, as follows:

19 (1) “For any initial violation that is intentionally committed, one
20 hundred dollars (\$100) for each underpaid employee for each pay
21 period for which the employee is underpaid.”

22 (2) “For each subsequent violation for the same specific offense,
23 two hundred fifty dollars (\$250) for each underpaid employee for
24 each pay period for which the employee is underpaid regardless of
25 whether the initial violation is intentionally committed.” (Lab.
26 Code, § 1197.1, subd. (a).)
27
28

1 32. As set forth above, Defendants failed to fully compensate the Class Members and
2 the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled
3 to recover liquidated damages for violations of Labor Code section 1197.1.

4 33. Based upon these same factual allegations, the Class Members are likewise entitled
5 to penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 34. Labor Code section 510 requires employers to compensate employees who work
8 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
9 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
10 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
11 employers to compensate employees at no less than twice the regular rate of pay when an employee
12 works more than twelve hours in a day or more than eight hours on the seventh consecutive day
13 of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage
14 Order.

15 35. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
16 Class Members and the Aggrieved Employees could not then agree and cannot now agree to work
17 for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage
18 Order.

19 36. Here, Defendants violated their duty to accurately and completely compensate the
20 Class Members and the Aggrieved Employees for all overtime worked. The Class Members and
21 the Aggrieved Employees periodically worked hours that entitled them to overtime compensation
22 under the law but were not fully compensated for those hours.

23 37. Moreover, during the relevant statutory periods, Defendants had a policy and
24 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.
25 Specifically, when Defendants paid overtime wages to the Class Members and the Aggrieved
26 Employees, Defendants failed to include all compensation when calculating the regular rate of pay
27 used in overtime calculations and when paying overtime.
28

1 38. For instance, the Class Members and the Aggrieved Employees would often
2 receive, along with their hourly rates of pay for their working hours, additional remuneration
3 and/or non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for
4 the Class Members and the Aggrieved Employees without factoring into the regular rate of pay all
5 other non-hourly pay earnings received during the pay period. As a result, the Class Members and
6 the Aggrieved Employees were underpaid overtime wages when they worked in excess of eight
7 hours in any workday and/or forty hours in a workweek when such additional forms of
8 remuneration were earned. By its practice of periodically requiring the Class Members and the
9 Aggrieved Employees to work in excess of eight hours in a workday and/or forty hours in a
10 workweek without compensating them at the rate of one and one-half (1½) their regular rate of
11 pay, Defendants willfully violated the provisions of Labor Code sections 510, 1194, and 1199.

12 39. These actions were and are in clear violation of California's overtime laws as set
13 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of
14 Regs., tit. 8, § 11040.) As a result of Defendants' faulty policies and practices, the Class Members
15 and the Aggrieved Employees were not compensated for all hours worked or paid accurate
16 overtime compensation.

17 **C. REST BREAK VIOLATIONS**

18 40. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants
19 were and are required to provide the Class Members and the Aggrieved Employees with
20 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four
21 hours worked. Under the Applicable Wage Order, an employer must authorize and permit all
22 employees to take ten minute duty free rest periods for every major fraction of four hours worked.
23 (Cal. Code of Regs., tit. 8, § 11040.)

24 41. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require
25 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"
27 (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay
28 their employees one additional hour of pay at the employee's regular rate for each workday that a

1 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage
2 Orders set when and for how long the rest period must take place and the Labor Code establishes
3 that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer
4 must pay their employees when employers fail to provide rest periods.

5 42. The California Supreme Court has held that, during required rest periods,
6 “employers must relieve their employees of all duties and relinquish any control over how
7 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
8 257, 260.) Relinquishing control over employees during rest periods requires that employees be
9 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
10 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
11 from adopting an unlawful policy:

12 “An employer is required to authorize and permit the amount of rest break
13 time called for under the wage order for its industry. If it does not—if, for
14 example, it adopts a uniform policy authorizing and permitting only one rest
15 break for employees working a seven-hour shift when two are required—it
16 has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior*
17 *Court* (2012) 53 Cal.4th 1004, 1033.)

18 43. Here, Defendants periodically did not permit the Class Members and the Aggrieved
19 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by
20 Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus*
21 *v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
22 employers must relieve employees of all duties and relinquish control over how employees spend
23 their time.”].) At all relevant times, the Class Members and the Aggrieved Employees were
24 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for
25 each four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
26 policies/practices. The Class Members and the Aggrieved Employees were often expected and
27 required to continue working through rest periods to meet the expectations Defendants and finish
28 the workday. In some cases when the Class Members and the Aggrieved Employees worked more

1 than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
2 As a result, the Class Members and the Aggrieved Employees were periodically unable to take
3 compliant rest periods.

4 44. In such cases where Defendants did not offer the Class Members and the Aggrieved
5 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude
6 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care*
7 (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal
8 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”];
9 *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever
10 arises for a rest break that was required by law but never authorized; if a break is not authorized,
11 an employee has no opportunity to decline to take it.”].)

12 45. In addition to failing to authorize and permit compliant rest periods, the Class
13 Members and the Aggrieved Employees were not compensated with one hour’s worth of pay at
14 their regular rate of compensation when they were not provided with a compliant rest period in
15 accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor
16 Code section 226.7 and the Applicable Wage Order.

17 46. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
18 non-exempt employees, rest period premiums and penalties.

19 **D. MEAL BREAK VIOLATIONS**

20 47. Labor Code section 512 and the Applicable Wage Order require employers to
21 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
22 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for
23 a work period of more than five hours per day without providing the employee with a meal period
24 of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer shall employ
25 any person for a work period of more than five (5) hours without a meal period of not less than 30
26 minutes”].) Additionally, an employee who works more than ten hours per day is entitled to
27 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd.
28

1 (a) ["An employer shall not employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than 30 minutes"].)

3 48. "An on-duty meal period is permitted only when the nature of the work prevents an
4 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
5 break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
6 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
7 California Department of Industrial Relations, Division of Labor Standards Enforcement
8 ("DLSE") and courts have "found that the nature of the work exception applies: (1) where the
9 work has some particular external force that requires the employee to be on duty at all times, and
10 (2) where the employee is the sole employee of a particular employer." (*Id.* at p. 945, internal
11 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
12 958–959.) "[I]t is the employer's obligation to determine whether the nature of the work prevents
13 an employee from being relieved before requiring an employee to take an on-duty meal period."
14 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

15 49. Here, the Class Members and the Aggrieved Employees were never asked to sign
16 any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature
17 of their work involved the kind of "external force" that might justify on-duty meal breaks. (*Lubin*
18 *v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically
19 did not provide compliant off-duty meal periods within the first five hours of work for the Class
20 Members and the Aggrieved Employees.

21 50. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
22 *Superior Court* (2012) 53 Cal.4th 1004, 1035 ["The IWC's wage orders have long made a meal
23 period's duty-free nature its defining characteristic."].) Relinquishing control over employees
24 during meal periods requires that employees be "free to leave the employer's premises" and be
25 "permitted to attend to personal business." (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
26 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that
27 does not authorize and permit the amount of meal time called for under the law (as specified in the
28

1 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
2 (*Brinker Restaurant Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033.)

3 51. During the applicable statutory periods here, the Class Members and the Aggrieved
4 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least
5 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
6 Defendants’ uniform meal period policies and practices, the Class Members and the Aggrieved
7 Employees were often not permitted to take complaint first meal periods before the end of the fifth
8 hour of work. The Class Members and the Aggrieved Employees were also periodically not
9 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated
10 Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit
11 the Class Members and the Aggrieved Employees to receive thirty-minute, off-duty meal periods
12 within the first five hours of their shifts.

13 52. Labor Code section 226.7 provides that “[a]n employer shall not require an
14 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
15 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
16 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
17 Order further obligate employers to pay employees one additional hour of pay at the employee’s
18 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
19 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11040 [“If an employer fails to provide an employee
20 a meal period in accordance with the applicable provisions of this order, the employer shall pay
21 the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
22 that the meal period is not provided.”].)

23 53. Accordingly, for each day that the Class Members and the Aggrieved Employees
24 did not receive compliant meal periods, they were and are entitled to receive meal period premiums
25 pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however,
26 failed to pay the Class Members and the Aggrieved Employees applicable meal period premiums
27 for many workdays that the employees did not receive a compliant meal period. Thus, Defendants
28 have violated Labor Code section 226.7 and the Applicable Wage Order.

1 54. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
2 non-exempt employees, meal period premiums and penalties.

3 **E. UNTIMELY WAGES DURING EMPLOYMENT**

4 55. Labor Code section 204 expressly requires employers who pay employees on a
5 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
6 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
7 employers who violate Labor Code section 204 subject to a penalty of:

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

10 “(2) For each subsequent violation, or any willful or intentional
11 violation, two hundred dollars (\$200) for each failure to pay each
12 employee, plus 25 percent of the amount unlawfully withheld.”

13 (Lab. Code, § 210, subd. (a).)

14 56. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
15 entirely independent and apart from, any other penalty provided in this article” (Lab. Code,
16 § 210, subd. (a).)

17 57. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees
18 the wages described above, along with rest and meal break premiums, Defendants failed to timely
19 pay the Class Members and the Aggrieved Employees within seven calendar days following the
20 close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See
21 *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL
22 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
23 premiums can support claims under Labor Code sections 203 and 204].)

24 **F. SEVEN-DAY WORKWEEK VIOLATIONS**

25 58. Defendants caused Plaintiffs and the Aggrieved Employees to work all seven days
26 in one or more workweeks in which they worked more than six hours on one or more days and/or
27 30 hours throughout the workweek, in violation of Labor Code sections 551 and 552.

1 **G. UNTIMELY WAGES AT SEPARATION**

2 59. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
3 wages of an employee who is discharged or who quits, the wages of the employee shall continue
4 as a penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th
5 487, 492.) As a result of Defendants’ failure to pay the Class Members and the Aggrieved
6 Employees for the wages described above, along with rest and meal break premiums, Defendants
7 violated and continue to violate Labor Code section 203.

8 60. Due to Defendants’ faulty pay policies, those former Class Members whose
9 employment with Defendants concluded were not compensated for each and every hour worked
10 at the appropriate rate. Defendants have failed to pay former Class Members whose sums were
11 certain at the time of termination within seventy-two hours of their resignation and have failed to
12 pay those sums for thirty days thereafter.

13 **H. WAGE STATEMENT VIOLATIONS**

14 61. Defendants also failed to provide accurate itemized wage statements in accordance
15 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,
16 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an
17 itemized wage statement in writing showing:

- 18 (1) The gross wages earned;
19 (2) The total hours worked by the employee;
20 (3) The number of piece-rate units earned and any applicable piece rate
21 if the employee is paid on a piece rate basis;
22 (4) All deductions, provided that all deductions made on written orders
23 of the employee may be aggregated and shown as one item;
24 (5) The net wages earned;
25 (6) The inclusive dates of the period for which the employee is paid;
26 (7) The name of the employee and only the last four digits of his or her
27 social security number or an employee identification number other
28 than a social security number;

- (8) The name and address of the legal entity that is 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.

62. Due to Defendants' failure to pay the Class Members properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, deductions, or net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Additionally, Defendants' wage statements failed to state the full name and address of the legal entities which were Plaintiffs' employers. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (4), (5), (8), and (9).

63. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Class Members with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class Members with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

I. RECORDKEEPING VIOLATIONS

64. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars

1 (\$1,000) per employee for each violation in a subsequent citation, for which
2 the employer fails to provide the employee a wage deduction statement or
3 fails to keep the records required in subdivision (a) of Section 226. The
4 civil penalties provided for in this section are in addition to any other
5 penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

6 65. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
7 including Defendants, to:

8 “Keep, at a central location in the state or at the plants or establishments at
9 which employees are employed, payroll records showing the hours worked
10 daily by and the wages paid to, and the number of piece-rate units earned
11 by and any applicable piece rate paid to, employees employed at the
12 respective plants or establishments. These records shall be kept in
13 accordance with rules established for this purpose by the commission, but
14 in any case shall be kept on file for not less than three years. An employer
15 shall not prohibit an employee from maintaining a personal record of hours
16 worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab.
17 Code, § 1174, subd. (d), emphasis added.)

18 66. As explained in detail above, Defendants failed to provide the Class Members with
19 accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
20 track hours worked by the Class Members. Defendants have thus failed to keep accurate records
21 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision
22 (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These
23 penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

24 67. The failure to accurately track hours worked also resulted in a failure of Defendants
25 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
26 employees, including Plaintiff and the other Class Members, in violation of Labor Code section
27 1174, subdivision (d).
28

1 **J. UNFAIR COMPETITION LAW VIOLATIONS**

2 68. Defendants have engaged and continue to engage in unfair and/or unlawful business
3 practices in California in violation of California Business and Professions Code section 17200, *et*
4 *seq.*, by committing the unlawful acts described above. Defendants' utilization of these unfair and
5 unlawful business practices deprived and continue to deprive Plaintiff of compensation to which
6 Plaintiff is legally entitled. Defendants have also received monies and/or other benefits by using
7 these unfair and/or unlawful business practices. These practices constitute unfair and unlawful
8 competition and provide an unfair advantage over Defendants' competitors who comply with
9 California law.

10 **V. CLASS ACTION ALLEGATIONS**

11 69. As mentioned above, Plaintiffs bring this action on behalf of themselves and the
12 Class Members pursuant to section 382 of the Code of Civil Procedure.

13 70. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of
14 all members would be unfeasible and not practicable. The membership of the class is unknown to
15 Plaintiffs at this time; however, it is estimated that the number of Class Members is greater than
16 100 individuals. The identity of such membership is readily ascertainable via inspection of
17 Defendants' employment records.

18 71. **Common Questions of Law and Fact Predominate/Well Defined Community**
19 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
20 situated non-exempt employees, which predominate over questions affecting only individual
21 members including, without limitation to:

22 A. Whether Defendants' pay policies/practices resulted in a failure to pay the
23 Class Members for all hours worked, including all minimum wages;

24 B. Whether Defendants' pay policies/practices resulted in a failure to pay the
25 Class Members for all required overtime wages at the Class Members' regular rate of pay;

26 C. Whether Defendants' rest period policies and practices afforded legally
27 compliant rest periods or compensation in lieu thereof;
28

1 D. Whether Defendants' meal period policies and practices afforded legally
2 compliant meal periods or compensation in lieu thereof;

3 E. Whether Defendants timely paid all wages during employment; and

4 F. Whether Defendants timely paid all wages earned and unpaid at separation.

5 72. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual Class Members. The common questions of
7 law set forth above are numerous and substantial and stem from Defendants' uniform policies and
8 practices applicable to each individual class member, such as Defendants' uniform policy and
9 practice of failing to pay for all hours worked, Defendants' uniform policies and practices which
10 failed to provide complaint rest periods, Defendants' uniform policies and practices which failed
11 to provide complaint meal periods, and others. As such, the common questions predominate over
12 individual questions concerning each individual class member's showing as to his or her eligibility
13 for recovery or as to the amount of his or her damages.

14 73. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class Members
15 because Plaintiffs were employed by Defendants as non-exempt employees in California during
16 the statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged
17 herein, Plaintiffs, like the other Class Members, were deprived of minimum, regular, and overtime
18 wages because of Defendants' unlawful timekeeping policies and practices, were deprived of rest
19 periods and premium wages in lieu thereof, were deprived of meal periods and premium wages in
20 lieu thereof, were subject to Defendants' uniform rest period policies and practices, were subject
21 to Defendants' uniform meal period policies and practices, were not paid all wages in full and on
22 time, and were subject to other similar policies and practices to which the Class Members were
23 subject.

24 74. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
25 steps to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs'
26 attorneys are ready, willing, and able to fully and adequately represent the Class Members and
27 Plaintiffs. Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state
28

1 and federal court in the past and are committed to vigorously prosecuting this action on behalf of
2 the Class Members.

3 75. **Superiority:** The California Labor Code is broadly remedial in nature and serves
4 an important public interest in establishing minimum working conditions and standards in
5 California. These laws and labor standards protect the average working employee from
6 exploitation by employers who have the responsibility to follow the laws and who may seek to
7 take advantage of superior economic and bargaining power in setting onerous terms and conditions
8 of employment. The nature of this action and the format of laws available to Plaintiffs and the
9 Class Members make the class action format a particularly efficient and appropriate procedure to
10 redress the violations alleged herein. If each employee were required to file an individual lawsuit,
11 Defendants would necessarily gain an unconscionable advantage since they would be able to
12 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
13 financial and legal resources.

14 76. Moreover, requiring each Class Member to pursue an individual remedy would also
15 discourage the assertion of lawful claims by employees who would be disinclined to file an action
16 against their former or current employer for real and justifiable fear of retaliation and permanent
17 damages to their careers at subsequent employment. Further, the prosecution of separate actions
18 by the individual Class Members, even if possible, would create a substantial risk of inconsistent
19 or varying verdicts or adjudications with respect to the individual Class Members against
20 Defendants herein, and which would establish potentially incompatible standards of conduct for
21 Defendants or legal determinations with respect to individual Class Members which would, as a
22 practical matter, be dispositive of the interest of the other Class Members not parties to
23 adjudications or which would substantially impair or impede the ability of the Class Members to
24 protect their interests.

25 77. Further, the claims of the individual Class Members are not sufficiently large to
26 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
27 thereto. As such, the Class Members identified above are maintainable as a class under section
28 382 of the Code of Civil Procedure.

1 **VI. EXHAUSTION OF REMEDIES**

2 78. Plaintiffs have fully and completely exhausted administrative remedies under
3 PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA
4 notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by
5 certified mail to Defendants setting forth the facts and theories of the violations alleged against
6 Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

7 79. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA
8 by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was
9 received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five
10 calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore entitled to
11 commence and proceed with a civil action pursuant to Labor Code section 2699.

12 **VII. CAUSES OF ACTION**

13 **First Cause of Action**

14 *Failure to Pay All Minimum Wages*

15 *(Against All Defendants)*

16 80. Plaintiffs reallege and incorporate by reference all previous paragraphs.

17 81. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the
18 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
19 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11040.) Labor Code sections 1194, subdivision
20 (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal
21 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together
22 with attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the
23 unpaid wages and interest accrued thereon.

24 82. Here, Defendants failed to fully conform their pay practices to the requirements of
25 the law during the relevant statutory periods. Plaintiffs and the other Class Members were not
26 compensated for all hours worked including, but not limited to, all hours they were subject to the
27 control of Defendants and/or suffered or permitted to work under the Labor Code and the
28 Applicable Wage Order.

83. Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

84. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and the other Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief because of Defendants' violations of the Labor Code and Applicable Wage Order.

85. Defendants' practices and policies regarding illegal employee compensation are unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

Second Cause of Action

Failure to Pay All Overtime Wages

(Against All Defendants)

86. Plaintiffs reallege and incorporate by reference all previous paragraphs.

87. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Order. Defendants caused Plaintiffs and the other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiffs and the other Class Members to work double-time hours

1 but did not compensate them at twice their regular rate of pay for such hours in accordance with
2 California law.

3 88. Defendants failed to fully conform their pay practices to the requirements of
4 California law. This unlawful conduct includes but is not limited to Defendants' uniform and
5 unlawful pay policies and practices of failing to accurately record all the time that non-exempt
6 employees were under the supervision and control of Defendants. The foregoing policies and
7 practices are unlawful and allow Plaintiffs and the other Class Members to recover in a civil action
8 the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties,
9 attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the
10 Applicable Wage Order, and Code of Civil Procedure section 1021.5.

11 **Third Cause of Action**

12 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

13 *(Against All Defendants)*

14 89. Plaintiffs reallege and incorporate by reference all previous paragraphs.

15 90. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish
16 the right of employees to be provided with a rest period of at least ten minutes for each four hour
17 period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11040.)

18 91. Due to Defendants' unlawful rest period policies and practices described in detail
19 above, Defendants did not authorize and permit Plaintiffs and the other Class Members to take all
20 rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have
21 not paid an additional hour of pay to Plaintiffs and the other Class Members at their respective
22 regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

23 92. The foregoing violations create an entitlement to recovery by Plaintiffs and the
24 other Class Members in a civil action for the unpaid amount of rest period premiums owing,
25 including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage
26 Order, and California Labor Code section 226.7.

1 **Fourth Cause of Action**

2 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

3 *(Against All Defendants)*

4 93. Plaintiffs reallege and incorporate by reference all previous paragraphs.

5 94. Plaintiffs are informed and believe and thereon allege, that Defendants failed in
6 their affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs and
7 the other Class Members, with all required meal periods in accordance with the mandates of the
8 Labor Code and the Applicable Wage Order, for the reasons set forth herein above. Despite
9 Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and the
10 other Class Members at their respective regular rates of pay for each violation, in accordance with
11 California Labor Code section 226.7.

12 95. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
14 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
15 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11040.)

16 **Fifth Cause of Action**

17 *Failure to Pay Wages Timely during Employment*

18 *(Against All Defendants)*

19 96. Plaintiffs reallege and incorporate by reference all previous paragraphs.

20 97. Labor Code section 200 provides that "wages" include all amounts for labor
21 performed by employees of every description, whether the amount is fixed or ascertained by the
22 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code
23 section 204 states that all wages earned by any person in any employment are payable twice during
24 the calendar month and must be paid not more than seven days following the close of the period
25 when the wages were earned. Labor Code section 210, subdivision (a), makes employers who
26 violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay
27 each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount
28 unlawfully withheld.

98. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

99. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class Members, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiffs and the other Class Members within seven days of the close of payroll, as required by law.

100. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiffs and the other Class Members these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiffs and the other Class Members.

101. Defendants' pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

Sixth Cause of Action

Failure to Pay All Wages Earned and Unpaid at Separation

(Against All Defendants)

102. Plaintiffs reallege and incorporate by reference all previous paragraphs.

103. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected or the class is certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and 202 of the California Labor Code require Defendants to pay all

1 compensation due and owing to its former employees (including the formerly-employed Class
2 Members) during the actionable period for this cause of action at or around the time that their
3 employment is or was terminated, or ended.

4 104. Section 203 of the Labor Code provides that if an employer willfully fails to pay
5 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then
6 the employer is liable for penalties in the form of continued compensation up to thirty workdays.

7 105. Due to Defendants' faulty pay policies, those Class Members whose employment
8 with Defendants has concluded were not compensated for each and every hour worked at the
9 appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members
10 whose sums were certain at the time of termination within seventy-two hours of their resignation
11 and have failed to pay those sums for thirty days thereafter as required by Labor Code sections
12 201 through 203.

13 106. As a result, Defendants are liable to the formerly-employed Class Members for
14 waiting time penalties amounting to thirty days wages for the formerly-employed Class Members
15 pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of
16 wages due upon termination entitles an employee to recover waiting time penalties].)

17 **Seventh Cause of Action**

18 *Failure to Create, Maintain, and Produce Complete and Accurate Employment Records*

19 *(Against All Defendants)*

20 107. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

22 Every employer shall... furnish each of his or her employees...an accurate
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the
24 employee, except for any employee whose compensation is solely based in a salary
25 and who is exempt from payment of overtime under subdivision (a) of Section 515
26 or any applicable order of the Industrial Welfare Commission, (3) the number of
27 piece-rate units earned, and any applicable piece rate if the employee is paid on a
28 piece-rate basis, (4) all deductions, provided that all –deductions made on written
orders of the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social security
number or an employee identification number other than a social security number,

1 (8) the name and address of the legal entity that is the employer, and (9) all
2 applicable hourly rates in effect during the pay period and the corresponding
number of the hours worked at each hourly rate by the employee...

3 109. Due to the conduct alleged above, the wage statements issued by Defendants did
4 not state the complete and accurate information required by Labor Code section 226.

5 110. Defendants' failure to provide complete and accurate itemized wage statements
6 caused Class Members to incur economic damages in that Class members were not aware that they
7 were owed and not paid all wages due. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949,
8 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records
9 so that the employee must perform arithmetic computations to determine the total hours worked
10 during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal*
11 *Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor
12 Code by not including, inter alia, total hours worked giving rise to claims under both Section 226
13 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005)
14 (reversing summary judgment for defendants where wage statements did not "give an accurate
15 report of the hours plaintiff worked, at least not on its face"); Cal. Labor Code § 226(e)(2)(B)
16 (clarifying that an injury is established where the wage statement violated Section 226(a) and the
17 employee cannot promptly and easily determine the gross wages, net wages, deductions, and
18 hourly rates and corresponding number of hours worked at each rate).

19 111. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay
20 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to
21 exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
22 which the employer fails to provide accurate itemized statements to the employee causing the
23 employee to suffer injury.

24 **Eighth Cause of Action**

25 *Violations of California's Unfair Competition Law*

26 *(Against All Defendants)*

27 112. Plaintiffs reallege and incorporate by reference all previous paragraphs.
28

1 113. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in California in violation of California Business and Professions Code section 17200, *et*
3 *seq.*, by committing the unlawful acts described above. Defendants' utilization of these unfair and
4 unlawful business practices deprived and continue to deprive Class Members of compensation to
5 which Class Members are legally entitled. Defendants have also received monies and/or other
6 benefits by using these unfair and/or unlawful business practices. These practices constitute unfair
7 and unlawful competition and provide an unfair advantage over Defendants' competitors who
8 comply with California law.

9 114. Because Class Members are victims of Defendants' unfair and unlawful conduct
10 alleged herein, Class Members seek full restitution of monies, as necessary and according to proof,
11 to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to
12 Business and Professions Code sections 17203 and 17208.

13 115. The acts complained of herein occurred within the four years prior to the initiation
14 of this action and are continuing into the present and ongoing.

15 116. Class Members were compelled to retain the services of counsel to file this court
16 action to protect Class Members' interests, to obtain restitution and injunctive relief on behalf of
17 Defendants' current non-exempt employees and to enforce important rights affecting the public
18 interest. Class Members have thereby incurred the financial burden of attorneys' fees and costs,
19 which Class Members are entitled to recover under Code of Civil Procedure section 1021.5.

20 **Ninth Cause of Action**

21 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections*

22 *201, 202, 203, 204, 210, 226.7, 510, 512, 551, 552, 558, 1185, 1194, 1194.2,*

23 *1197, 1197.1, 1198, 1199, and Other Provisions of the Labor Code*

24 *(Against All Defendants)*

25 117. Plaintiffs reallege and incorporate by reference all previous paragraphs.

26 118. Based on the above allegations incorporated by reference, Defendants violated
27 Labor Code sections 201, 202, 203, 204, 210, 226.7, 510, 512, 551, 552, 558, 1185, 1194, 1194.2,
28

1 1197, 1197.1, 1198, 1199, and others that may be applicable; and the Applicable Wage Order (Cal.
2 Code of Regs., tit. 8, § 11040), and others that may be applicable.

3 119. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
4 sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202,
5 203, 204, 210, 226.7, 510, 512, 551, 552, 558, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
6 others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040),
7 and others that may be applicable.

8 120. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such
9 violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be
10 shown at the time of trial subject to the following formula:

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

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

13 121. These penalties must be allocated seventy-five percent to the Labor and Workforce
14 Development Agency ("LWDA") and twenty-five percent to the affected employees. These
15 penalties may be stacked separately for each of Defendants violations of the California Labor
16 Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with
17 approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM)
18 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for
19 penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226,
20 subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012,
21 No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts
22 applying California law have found that "PAGA penalties can be stacked, i.e., multiple PAGA
23 penalties can be assessed for the same pay period for different Labor Code violations."], internal
24 quotation marks omitted).

25 122. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs
26 and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor
27 Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants'
28

1 violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates,*
2 *LLC, supra*, 15 Cal.App.5th at pp. 780, 788.)

3 123. For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the
6 amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and
7 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
8 the employer fails to provide the employee a wage deduction statement or fails to keep the required
9 in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by
10 law Plaintiffs and the Aggrieved Employees are entitled to recover penalties for violations of Labor
11 Code section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations
12 of Labor Code section 226, subdivision (e).

13 124. Labor Code section 210 provides that “in addition to, an entirely independent and
14 apart from, any other penalty provided in this article, every person who fails to pay the wages of
15 each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows:
16 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
17 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
18 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result
19 of the faulty compensation policies and practices, Plaintiffs and the Aggrieved Employees are also
20 entitled to recover penalties under Labor Code section 210 through PAGA.

21 125. Labor Code section 551 provides, “Every person employed in any occupation of
22 labor is entitled to one day’s rest therefrom in seven.” To that end, Labor Code section 552 states,
23 “No employer of labor shall cause his employees to work more than six days in seven.” Defendants
24 violated these Labor Code sections when they caused Plaintiffs and the Aggrieved Employees to
25 work all seven days in one or more workweeks in which Plaintiffs and the Aggrieved Employees
26 worked more than six hours in one or more workdays and/or 30 hours throughout the workweek.
27 Through PAGA and pursuant to Labor Code section 558, Plaintiffs and the Aggrieved Employees
28 are entitled to recover civil penalties for these violations in the amount of fifty dollars (\$50) for

1 any initial violative pay period and one hundred dollars (\$100) for each subsequent violative pay
2 period.

3 126. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
4 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that
5 is intentionally committed for each underpaid employee for each pay period for which the
6 employee is underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for
7 the same specific offense for each underpaid employee for each pay period for which the employee
8 is underpaid regardless of whether the initial violation is intentionally committed. Accordingly,
9 through PAGA and to the extent permitted by law, Plaintiffs and the Aggrieved Employees are
10 entitled to recover pursuant to Labor Code section 1197.1.

11 127. Plaintiffs were compelled to retain the services of counsel to file this action to
12 protect their interests and those of the Aggrieved Employees, and to assess and collect the wages
13 and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs,
14 which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (g)(1).

15 **VIII. DEMAND FOR JURY TRIAL**

16 128. Plaintiffs hereby demand trial by jury of Plaintiffs' and the Class Members' claims
17 against Defendants.

18 **IX. PRAYER FOR RELIEF**

19 Plaintiffs pray for judgment for self and for all others on whose behalf this suit is brought
20 against Defendants, as follows:

- 21 1. For an order certifying the proposed class;
- 22 2. For an order appointing Plaintiffs as representatives of the class;
- 23 3. For an order appointing Plaintiffs' counsel as counsel for the class;
- 24 4. For the failure to pay all minimum wages, compensatory, consequential, general,
25 and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and
26 others as may be applicable;

1 **5.** For the failure to pay all overtime wages, compensatory, consequential, general,
2 and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and
3 others as may be applicable;

4 **6.** For the failure to provide rest periods and pay missed rest period premiums,
5 compensatory, consequential, general, and special damages according to proof pursuant to Labor
6 Code section 226.7;

7 **7.** For the failure to provide meal periods and pay missed meal period premiums,
8 compensatory, consequential, general, and special damages according to proof pursuant to Labor
9 Code sections 226.7 and 512;

10 **8.** For the failure to pay wages timely during employment, the unpaid balance of the
11 compensation owed to Plaintiffs and the other Class Members and any applicable penalties owed
12 to them pursuant to Labor Code section 210;

13 **9.** For the failure to pay all wages earned and unpaid at separation, statutory waiting
14 time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit
15 or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;

16 **10.** For failure to create, maintain, and produce complete and accurate employment
17 records, penalties pursuant to Labor Code sections 226, 226.3, 1174.5, and others that may be
18 applicable;

19 **11.** For violation of California's Unfair Competition Law, restitution to Plaintiff and
20 the other Class Members of all money and/or property unlawfully acquired by Defendants by means
21 of any acts or practices declared by this Court to be in violation of Business and Professions Code
22 sections 17200 through 17210;

23 **12.** For the claim of penalties pursuant to PAGA and other provisions of the California
24 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each
25 subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
26 representative action brought on behalf of Plaintiffs and the Aggrieved Employees pursuant the
27 Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor
28 Code sections 210 and 558;

13. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

14. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;

15. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and

16. For such other and further relief, this Court may deem just and proper.

Dated: August 18, 2021

MELMED LAW GROUP P.C.

By: Jonathan Melmed
Jonathan Melmed
*Attorneys for Plaintiffs, the Putative Class,
and the Aggrieved Employees*

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, August 18, 2021, I served the foregoing document(s) described as:

- FIRST AMENDED CONSOLIDATED COMPLAINT AND PAGA REPRESENTATIVE ACTION COMPLAINT

By causing a true copy thereof to be served on the following parties and/or individuals:

LEWIS BRISBOIS
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[XX] BY ELECTRONIC TRANSMISSION. Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 18, 2021, in Los Angeles, California.



Lorie Gutierrez