

GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
handerson@grahamhollis.com
Alyssa L. Smith (PL-510067)
asmith@grahamhollis.co
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

Attorneys for Plaintiff Carmelita Coaston

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/24/2021 at 04:53:12 PM
Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CARMELITA COASTON, as an individual, on
behalf of herself, and all persons similarly
situated,

Plaintiff,

v.

TLC MEDICAL TRANSPORT, LLC, a
California limited liability corporation
authorized to do business in the state of
California; STEVE ABBO, an individual; and
DOES 1 through 50 inclusive,

Defendants.

Case No.: 37-2021-00040915-CU-DE-CTL

CLASS AND REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, PENALTIES AND
INJUNCTIVE RELIEF:**

- (1) FAILURE TO TIMELY PAY
MINIMUM, REGULAR, AND/OR
OVERTIME WAGES
(Labor Code §§ 204, 210, 510, 558, 558.1,
1194, 1194.2, 1197, 1197.1, 1198, and
1199);**
- (2) FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS
AND/OR TIMELY PAY PREMIUM
WAGES
(Labor Code §§ 204, 210, 226.7, 512,
558, and 558.1);**
- (3) FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS
AND/OR TIMELY PAY PREMIUM
WAGES
(Labor Code §§ 204, 210, 226.7, and
558.1);**
- (4) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS EXPENSES
(Labor Code §§ 558.1 and 2802);**

- (5) **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES**
(Labor Code §§ 201-203, 210, and 558.1);
- (6) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 558.1);
- (7) **FAILURE TO MAINTAIN ACCURATE RECORDS**
(Labor Code §§ 226, 1174, 558.1, and 1174.5);
- (8) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
(Bus. & Prof. Code §§ 17200 *et seq.*); and
- (9) **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT** (Labor Code §§ 2698 *et seq.*).

DEMAND FOR JURY TRIAL

Plaintiff Carmelita Coaston ("Plaintiff") brings this class and representative action on behalf of herself and all persons similarly situated against Defendants TLC Medical Transport, LLC, Steve Abbo, and DOES 1 through 50, inclusive (collectively, "TLC" or "Defendants"), on the following grounds:

INTRODUCTION

1. This class and representative action is brought by Plaintiff on behalf of herself and all other current or former non-exempt employees of TLC who worked at any TLC location in the state of California during the relevant time period (referred to herein as "TLC Employees").

2. Plaintiff asserts that during the relevant time period, TLC engaged in a common pattern and practice of wage and hour violations under the California Labor Code ("Labor Code") and the California Industrial Welfare Commission's ("IWC") Wage Order No. 9-2001 to decrease its employment related costs and increase its profits by, among other things:

- a. Failing to timely compensate for all hours actually worked, including, minimum, regular, and/or overtime wages;

- b. Failing to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods;
- c. Failing to authorize and permit legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods;
- d. Failing to reimburse for necessary business expenses;
- e. Failing to timely pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties;
- f. Failing to furnish accurate itemized wage statements;
- g. Failing to maintain accurate records;
- h. Engaging in unlawful, unfair and/or fraudulent business practices; and
- i. Violating the Private Attorneys General Act of 2004 (“PAGA”).

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, penalties, and injunctive relief, as well as reasonable attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and her counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) section 410.10. Pursuant to Code of Civil Procedure section 382, California Business and Professions Code (“Business & Professions Code”) section 17203, and Labor Code sections 2698 *et seq.*, Plaintiff brings this action on behalf of herself and all other TLC Employees.

6. This Court has personal jurisdiction over TLC because TLC conducts business in the state of California and has caused injuries in the county of San Diego, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and Business & Professions Code.

7. Venue as to TLC is proper in this judicial district pursuant to Code of Civil Procedure section 395(a). TLC transacts business in San Diego County and is otherwise within this Court’s

jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other TLC Employees within the county of San Diego and throughout the state of California.

8. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

THE PARTIES

I. PLAINTIFF

9. Plaintiff Carmelita Coaston at all material times mentioned herein:

- a. Is a resident of the county of San Diego, California;
- b. Has been employed by TLC from about December 2020 to the present as a Driver in San Diego, California;
- c. Engages in work for TLC in the county of San Diego;
- d. Earns an hourly wage;
- e. Is to be paid on a bi-weekly basis;
- f. Is typically scheduled to work six (6) days per week and over forty (40) hours per week;
- g. Is classified by TLC as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- h. Is not timely compensated the appropriate minimum, regular, overtime, and/or double time wages for all time engaged in work;
- i. Is not provided with the opportunity to take legally compliant meal periods and/or timely paid compensation in lieu thereof;
- j. Is not authorized and permitted to take legally compliant rest periods and/or timely paid compensation in lieu thereof;
- k. Is not reimbursed for all necessary business expenses that she incurs in the discharge of her job duties;
- l. Contends other TLC Employees have not been timely paid all wages due and

payable upon separation of employment and/or the required waiting time penalties for the late payment of wages;

m. Is not furnished with accurate itemized wage statements;

n. Contends her employee and/or payroll records are not accurately maintained by TLC;

o. Is subject to TLC's unlawful, unfair, and fraudulent business practices;

p. Is a member of the class and sub-class defined herein;

q. Is an "aggrieved employee" as defined by Labor Code section 2699(c); and

r. Has complied with all requirements outlined in Labor Code sections 2698 *et seq.*

II. DEFENDANTS

10. Defendant TLC Medical Transport, LLC is organized in the state of California and has its headquarters located in San Diego, California. TLC Medical Transport, LLC is authorized to do business, and is actually doing business, in the state of California. TLC Medical Transport, LLC is a provider of non-emergency wheelchair and gurney transportation services, including, but not limited to, transportation to and from hospitals, dialysis centers, nursing homes, and doctor's offices, gurney van services, wheelchair van services, and ambulatory van services, operating throughout San Diego County.

11. Defendant Steve Abbo is a natural person residing in the State of California and is an owner, director, officer, or managing agent of Defendant TLC Medical Transport, LLC.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

13. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant are also alleged to have been done and/or caused by each fictitiously named defendant, and by each of their agents and/or employees who acted within the scope of their agency and/or

1 employment.

2 14. At all times mentioned herein, each named defendant, including each fictitiously named
3 defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other
4 defendants.

5 15. At all times mentioned herein, each named defendant, including each fictitiously named
6 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of
7 the other defendants, and in doing the things alleged herein acted within the course and scope of such
8 agency, employment, alter-ego and/or in furtherance of the joint venture.

9 16. Each Defendant, whether named or fictitious, was the alter ego of each of the other
10 Defendants at all relevant times herein.

11 17. At all times mentioned herein, the acts and/or omissions of each of the named defendants,
12 including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions
13 of each and every one of the other defendants, including each fictitiously named defendant, in proximately
14 causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants,
15 including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and
16 every one of the acts and/or omissions complained herein. Each named defendant, including each
17 fictitiously named defendant, were and are acting with authority of each and every other defendant and/or
18 are acting as agents of each and every other named defendant or Doe defendant.

19 18. At all times mentioned herein there was a unity of interest and ownership between each
20 named defendant, including each fictitiously named defendant, such that all defendants acted as a single
21 employer of Plaintiff and all other TLC Employees.

22 19. At all times mentioned herein each named defendant, including each fictitiously named
23 defendant, exercised supervision and control over the working conditions of Plaintiff and all other TLC
24 Employees, including, but not limited to, implementing standard policies and procedures.

25 20. On information and belief, STEVE ABBO did not respect corporate formalities and treated
26 TLC's corporate assets as his own assets. An inequitable result would occur if STEVE ABBO was not
27 held liable as the alter ego of TLC because STEVE ABBO orchestrated the Labor Code violations against
28 Plaintiff and other similarly situated and/or aggrieved employees.

FACTUAL ALLEGATIONS

21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

22. Plaintiff is employed by, or has otherwise performed work for, TLC from approximately December 2020 to the present, as Driver. Plaintiff's job duties as a Driver include, but are not limited to, driving vans to pick up and drop off patients at various locations throughout San Diego County.

23. Plaintiff is classified by TLC as a non-exempt employee, earns an hourly rate, and is to be paid on a bi-weekly basis. Plaintiff typically works six (6) days per week and over forty (40) hours per week, and often works overtime and double time.

24. Plaintiff asserts that TLC has employed, and will continue to employ, several individuals in a non-exempt capacity in San Diego County and throughout the state of California.

25. Plaintiff further alleges that throughout the relevant time period all TLC Employees earned an hourly wage and were to be paid on a bi-weekly basis.

26. Plaintiff contends that she and all other TLC Employees are subject to the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

27. Plaintiff further alleges that she and all other TLC Employees have suffered, and, on information and belief, will continue to suffer, the same and/or similar violations of law described herein.

28. Plaintiff contends that TLC has a policy, practice, procedure, guideline, and/or culture of not compensating her and all other TLC Employees, on the designated pay days, all minimum, regular, overtime and/or double time wages for all time engaged in work on behalf of TLC.

29. Plaintiff asserts that she and other TLC Employees regularly perform work for TLC and/or are under the control of TLC while they are off-the-clock for a meal period. However, TLC considers such time as non-compensable time and therefore fails to provide any remuneration to Plaintiff and TLC Employees.

30. Plaintiff also contends TLC failed to compensate TLC Employees, including Plaintiff, for all hours worked because TLC has an illegal policy of shaving time off and/or editing time from Plaintiff's and other TLC Employees' timecards. For instance, Plaintiff contends that she has noticed on several occasions that the hours shown on her pay stubs do not match up to the hours shown on her timesheets

1 and although she has brought this issue to the attention of her direct supervisors, nothing has been done to
2 address or resolve this.

3 31. Further, Plaintiff contends that TLC promised to pay her and, on information and belief,
4 other TLC Employees, additional wages as hazard pay as a result of working through the COVID-19
5 pandemic. However, to this day, Plaintiff has not received all hazard pay wages that were promised to her.
6 Therefore, based on the foregoing, Plaintiff and, on information and belief, other TLC Employees, are not
7 paid on the days designated in advance by TLC as regular pay days for all time actually worked and/or
8 spent under the control of TLC.

9 32. Plaintiff contends that TLC does not have a policy, practice, procedure, guideline, and/or
10 culture of providing all TLC Employees with the opportunity to take an uninterrupted, thirty (30) minute
11 off-duty meal period before the end of their fifth (5th) hour of work when they worked five (5) or more
12 hours in a day. Similarly, Plaintiff contends that TLC does not have a policy, practice, procedure,
13 guideline, and/or culture of providing all TLC Employees with the opportunity to take a second
14 uninterrupted, thirty (30) minute off-duty meal period when they worked more than ten (10) hours in a
15 day.

16 33. Plaintiff contends that despite regularly working more than five hours per day, she and
17 other TLC Employees are often instructed or otherwise compelled to work through their meal periods due
18 to TLC's chronic understaffing and the demand for services. This is particularly true when the TLC
19 Employee is the only person on duty on a given route and there is no one available to relieve him or her.
20 Additionally, due in large part to TLC's chronic understaffing and the demand for services, Plaintiff and
21 other TLC Employees regularly receive meal periods after their 6th hour of work.

22 34. Plaintiff also contends that even when she and other TLC Employees receive timely meal
23 periods, their meal periods are often interrupted and/or cut short by their supervisors and/or dispatch
24 directing or otherwise compelling them to return to work or in some instances, pick up more patients.
25 Moreover, TLC Employees have to regularly monitor their company electronic devices and/or personal
26 cell phones during meal periods and respond as necessary. On at least a few occasions, Plaintiff and, on
27 information and belief, other TLC Employees have been reprimanded because they did not respond to
28 their supervisors and/or dispatch's calls on their personal cell phones during their meal periods. As a result,

1 Plaintiff and other TLC Employees regularly receive meal periods that are not free from TLC's control,
2 late, interrupted by work duties and/or less than thirty (30) minutes in length.

3 35. Despite not being provided with legally compliant meal periods, Plaintiff alleges that TLC
4 does not have a policy, practice, procedure, guideline, and/or culture of timely paying meal period
5 premium wages to Plaintiff and other TLC Employees for all meal periods that do not comply with
6 California law.

7 36. Plaintiff further alleges that TLC does not have a policy, practice, procedure, guideline,
8 and/or culture of authorizing and permitting Plaintiff and other TLC Employees to take uninterrupted off-
9 duty rest periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

10 37. Plaintiff asserts that TLC Employees, such as herself, are not authorized and permitted to
11 take lawful rest periods due to TLC's chronic understaffing, demand for services, and because there is no
12 time allotted and/or built into the daily schedules to allow for rest periods. This is particularly true for
13 TLC Employees, such as Plaintiff, who are the only persons on duty and have no one to relieve them. In
14 addition, Plaintiff contends that TLC considers the time Plaintiff and other TLC Employees are waiting
15 for a patient in between stops as their rest periods. Moreover, TLC Employees have to regularly monitor
16 their company electronic devices and/or personal cell phones during rest periods and respond as necessary.
17 As a result, Plaintiff and other TLC Employees receive rest periods that are not free from TLC's control,
18 interrupted by work duties, and/or less than ten (10) minutes in length. On a majority of occasions, Plaintiff
19 and other TLC Employees miss, or are otherwise compelled to forgo, their rest periods.

20 38. Despite not being provided with legally compliant rest periods, Plaintiff alleges that TLC
21 does not have a policy, practice, procedure, guideline, and/or culture of timely compensating Plaintiff and
22 other TLC Employees premium wages for all unlawful rest periods.

23 39. Plaintiff asserts that TLC has a policy, practice, procedure, guideline, and/or culture of
24 failing to reimburse all TLC Employees, including Plaintiff, for all necessary business expenses that are
25 incurred in the discharge of their job duties. For example, Plaintiff and other TLC Employees regularly
26 use and often need to use their personal cell phones to communicate with their supervisors and dispatch
27 regarding work-related issues throughout the work day. This is particularly true as the company-provided
28 devices often do not work appropriately. Despite requiring TLC Employees to use their personal cell

1 phones for work-related purposes, TLC does not reimburse TLC Employees, such as Plaintiff, a
2 reasonable percentage of their cell phone bill, in violation of California law.

3 40. Plaintiff alleges that TLC has a policy, practice, procedure, guideline, and/or culture of
4 willfully failing to timely pay former TLC Employees all wages due and owing upon separation of
5 employment and/or the mandated waiting time penalties for the late payment of such wages. For instance,
6 TLC has failed to timely pay former AV Employees all minimum, regular, overtime and/or double time
7 wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned
8 Labor Code violations. Plaintiff further contends, on information and belief, that former TLC Employees
9 have not yet received the required waiting time penalties for TLC's failure to immediately pay all wages
10 due and owing upon separation of employment.

11 41. Plaintiff asserts that TLC has a policy, practice, procedure, guideline, and/or culture of
12 furnishing TLC Employees, including Plaintiff, with wage statements that do not comply with California
13 law. Plaintiff contends that the wage statements furnished to her and other TLC Employees do not include,
14 for instance, the total hours actually worked by the employee, all applicable hourly rates in effect during
15 the pay period, including the proper overtime rate, the corresponding number of hours worked at each
16 hourly rate by the employee, and the actual gross and net wages earned.

17 42. Due to the lack of information on the furnished wage statements, TLC Employees, such as
18 Plaintiff, are unable to promptly and easily determine the total number of hours actually worked, the
19 applicable hourly rates in effect during the pay period and/or the corresponding number of hours worked
20 at each hourly rate, among other things.

21 43. As a result of TLC's policies, practices, procedures, guidelines, and/or culture described
22 herein including, but not limited to, failing to compensate AV Employees all minimum, regular, overtime
23 and/or double time wages, failing to provide legally compliant meal periods or compensation in lieu
24 thereof, and failing to furnish accurate itemized wage statements, TLC knowingly and intentionally failed
25 to maintain accurate employee and payroll records, reflecting TLC Employees' actual time worked, the
26 proper beginning and end of each work period, the meal periods, the total hours worked during the pay
27 period, the applicable rates of pay, among other things, as required by California law.

44. On June 14, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency (“LWDA”) and TLC as required by the Private Attorneys General Act of 2004 (“PAGA”) informing them of TLC’s alleged violations of the Labor Code. A true and correct copy of the June 14, 2021 written notice is attached hereto as **Exhibit 1** and incorporated herein by reference.

45. According to Labor Code section 2699.3 the LWDA had sixty-five (65) days from the date of submission to notify the parties of whether it intends to investigate the alleged violations. To date, the LWDA has not informed Plaintiff that it intends to investigate Plaintiff’s allegations. Thus, pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative action in his representative capacity on behalf of himself, all other TLC Employees, the general public and the state of California as permitted by Labor Code section 2699.3.

46. Plaintiff further believes that additional violations may be discovered and therefore reserves her right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

CLASS DEFINITIONS

47. Plaintiff seeks to represent the following class and sub-class, which are defined as:

The Non-Exempt Class

All other current or former non-exempt employees of TLC who worked at any TLC location in the state of California during the relevant time period commencing on the date that is within four years prior to the filing of the initial complaint through and including the last date of trial (hereinafter the “Class Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the class against Defendants, the time period should be adjusted accordingly.

The Non-Exempt Waiting Time Penalties Sub-Class

All other current or former non-exempt employees of TLC who worked at any TLC location in the state of California during the relevant time period commencing on the date that is within three years prior to the filing of the initial complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the sub-class against Defendants, the time period should be adjusted accordingly.

1 48. Members of the class and/or sub-class are all “employees” as the term is used in the Labor
2 Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

3 49. A more precise definition of the class and/or sub-class may be determined after further
4 investigation and discovery. Plaintiff reserves her right to redefine the class, sub-class and/or create
5 additional sub-classes at any time prior to the court’s order on Plaintiff’s class certification motion as
6 provided by law. (Cal. Rules Ct., R. 3.765(b).)

7 **CLASS ALLEGATIONS**

8 50. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
9 paragraphs of this Complaint.

10 51. Plaintiff brings this action on behalf of herself and on behalf of all persons within the class
11 and/or sub-class defined herein.

12 52. This class action meets the statutory prerequisites for the maintenance of a class action, as
13 set forth in Code of Civil Procedure section 382 and California Civil Code (“Civil Code”) section 1781,
14 in that:

- 15 a. The persons who comprise the class and/or sub-class are so numerous that the
16 joinder of all such persons is impracticable and the disposition of their claims as a
17 class will benefit the parties and the Court;
- 18 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
19 raised in this Complaint are common to the class and/or sub-class and will apply
20 uniformly to every member of the class and/or sub-class, and as a practical matter,
21 be dispositive of the interests of the other members not party to the adjudication;
- 22 c. The parties opposing the class and/or sub-class have acted or have refused to act on
23 grounds generally applicable to the class, thereby making final injunctive relief or
24 declaratory relief appropriate with respect to the class as a whole; and
- 25 d. Common questions of law and fact exist as to the members of the class and/or sub-
26 class and predominate over any question affecting only individual members, and a
27 class action is superior to other available methods for the fair and efficient
28 adjudication of the controversy, including consideration of:

- i. The interests of class members and/or sub-class members in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class and/or sub-class;
- iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
- iv. The likely difficulties in the managing a class action.

53. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure 382 and Civil Code section 1781 because:

- a. Questions of law and fact common to the class and/or sub-class are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of class members' and/or sub-class members' claims;
- c. The members of the class and/or sub-class are so numerous that it is impractical to bring all class members before the Court;
- d. Plaintiff's claims are typical of the claims of the class and/or sub-class;
- e. Class members and/or sub-class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the class and/or sub-class;
- g. Plaintiff can fairly and adequately protect the interests of the class and/or sub-class;
- h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the class and/or sub-class for the injuries sustained; and
- i. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class and/or

sub-class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME, WAGES

**[Labor Code §§ 204, 210, 510, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the
“Minimum Wages” and “Hours and Days of Work” Sections of IWC Wage Order No. 9-2001]**

54. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

55. Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Thus, Labor Code section 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work.

56. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” (*See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

57. Labor Code section 1198 mandates,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

58. The “Minimum Wages” section of IWC Wage Order No. 9-2001 also states that, “[e]very 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.”

59. Codifying an employee's right to overtime compensation, Labor Code section 510 provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

60. The "Hours and Days of Work" and "Minimum Wages" sections of the IWC Wage Order No. 9-2001 mandate the same requirements as Labor Code section 510.

61. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

62. Labor Code section 1194(a) mandates:

...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

63. Labor Code section 1197.1 further provides,

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

64. For actions brought under Labor Code sections 1194 or 1197.1, Labor Code section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

65. Labor Code section 1199 imposes "a fine of not less than one hundred dollars (\$100)" for any employer who violates the provisions set forth in Labor Code section 1198.

66. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation

1 and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

2 67. Labor Code section 558 provides that “any employer or other person acting on behalf of
3 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
4 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
5 penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid
6 in addition to an amount sufficient to recover unpaid wages for any initial violation, and \$100 for each
7 underpaid employee for each pay period for which the employee was underpaid for each subsequent
8 violation in addition to an amount sufficient to recover unpaid wages.

9 68. Labor Code section 558.1(a) provides liability for an “other person acting on behalf of an
10 employer [] who violates, or causes to be violated, any provision regulated minimum wages or hours and
11 days of work in any order of the Industrial Welfare Commission...or [Labor Code] section...1194.” Labor
12 Code section 558.1(b) provides that an “other person” is a “natural person who is an owner, director,
13 officer, or managing agent” of an employer.

14 69. Plaintiff alleges that she and other TLC Employees, earn an hourly wage and are to be paid
15 on a bi-weekly basis.

16 70. Plaintiff alleges that TLC has a policy, practice, procedure, guideline, and/or culture of not
17 compensating her and all other TLC Employees, on the days designated in advance by the employer as
18 regular pay days, all minimum, regular, overtime and/or double time wages for all the time engaged in
19 work on behalf of TLC. For example, Plaintiff asserts that she and other TLC Employees regularly perform
20 work for TLC and/or are under the control of TLC while they are off-the-clock for a meal period. However,
21 TLC considers such time as non-compensable time and therefore fails to provide any remuneration to
22 Plaintiff and TLC Employees. Moreover, Plaintiff also contends TLC failed to compensate TLC
23 Employees, including Plaintiff, for all hours worked because TLC has an illegal policy of shaving time
24 off and/or editing time from Plaintiff’s and other TLC Employees’ timecards. For instance, Plaintiff
25 contends that she has noticed on several occasions that the hours shown on her pay stubs do not match up
26 to the hours shown on her timesheets and although she has brought this issue to the attention of her direct
27 supervisors, nothing has been done to address or resolve this. Further, Plaintiff contends that TLC
28 promised to pay her and, on information and belief, other TLC Employees, additional wages as hazard

1 pay as a result of working through the COVID-19 pandemic. However, to this day, Plaintiff has not
2 received all hazard pay wages that were promised to her. Therefore, based on the foregoing, Plaintiff and,
3 on information and belief, other TLC Employees, are not paid on the days designated in advance by TLC
4 as regular pay days for all time actually worked and/or spent under the control of TLC.

5 71. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant
6 Steve Abbo, was, at all relevant times, an owner, director, officer, or managing agent of TLC and violated
7 or caused to be violated the provisions of Wage Order No. 9-2001 governing wages or hours and days or
8 work, as well as Labor Code section 1194 and is individually liable for the violations of Wage Order No.
9 9-2001 and the relevant Labor Code sections 204, 510, 1194, and 1198 as alleged above.

10 72. By virtue of TLC's unlawful failure to compensate Plaintiff and other TLC Employees
11 minimum, regular, overtime, and/or double time wages for all of their time actually worked, TLC
12 Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown,
13 but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof
14 at trial.

15 73. Having received less than the legal minimum wage and/or applicable rate of overtime
16 and/or double time compensation, Plaintiff and other TLC Employees are entitled to, and now seek to
17 recover, all wages and penalties owed including, but not limited to, penalties and liquidated damages
18 available under Labor Code sections 210, 558, 1194.2, 1197.1, and 1199, as well as interest and reasonable
19 attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, and Code of Civil Procedure
20 section 1021.5.

21 74. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
22 in the prayer below.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

AND/OR TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS

[Labor Code §§ 204, 210, 226.7, 512, 558, 558.1,

and the “Meal Periods” Section of IWC Wage Order No. 9-2001]

75. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

76. Labor Code section 512(a) mandates,

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (Emphasis added.)

77. The “Meal Periods” section of IWC Wage Order No. 9-2001 provides, in pertinent part,

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, nor more than one (1) hour.

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

78. The “Meal Periods” section of IWC Wage Order No. 9-2001 also states,

Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

1 79. A meal period generally comports with the requirements under California law if the
2 employee (1) has at least thirty (30) minutes uninterrupted, (2) is free to leave the premises, and (3) is
3 relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53
4 Cal.4th 1004, 1036.) Additionally, “an employer may not undermine formal policy of providing meal
5 breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040.)

6 80. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work
7 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
8 regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c)
9 further provides,

10
11 If an employer fails to provide an employee a meal or rest or recovery
12 period in accordance with a state law... the employer shall pay the
13 employee one additional hour of pay at the employee’s regular rate of
14 compensation for each workday that the meal or rest or recovery period is
15 not provided.

16 81. Labor Code section 204 establishes an employee’s fundamental right in the state of
17 California to be paid wages in a timely manner for their work. Premium wages under Labor Code section
18 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy v. Kenneth*
19 *Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

20 82. Labor Code section 210 provides that, “every person who fails to pay the wages of an
21 employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation
22 and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

23 83. Labor Code section 558 subjects any employer or any person acting on behalf of an
24 employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code sections 500-558)
25 or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as
26 follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
27 for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for
28 each underpaid employee for each pay period for which the employee was underpaid.”

84. Labor Code section 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours and days of work in any order of the Industrial Welfare Commission...or [Labor Code] sections... 226.7.” Labor Code section 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer.

85. Plaintiff alleges that TLC does not have a policy, practice, procedure, guideline and/or culture of providing all TLC Employees with the opportunity to take a thirty (30) minute, uninterrupted, off-duty meal period before the end of their fifth (5th) hour of work when they worked five (5) or more hours in a day, and/or the opportunity to take a second thirty (30) minute, uninterrupted, off-duty meal period when they worked more than ten (10) hours in a day.

86. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant Steve Abbo, was an owner, director, officer, or managing agent of TLC and violated or caused to be violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 1194 and is individually liable for the violations of Wage Order No. 9-2001 and Labor Code sections 204, 226.7, and 512 as alleged above.

87. Plaintiff contends that despite regularly working more than five hours per day, she and other TLC Employees are often instructed or otherwise compelled to work through their meal periods due to TLC’s chronic understaffing and the demand for services. This is particularly true when the TLC Employee is the only person on duty on a given route and there is no one available to relieve him or her. Additionally, due in large part to TLC’s chronic understaffing and the demand for services, Plaintiff and other TLC Employees regularly receive meal periods after their 6th hour of work.

88. Plaintiff also contends that even when she and other TLC Employees receive timely meal periods, their meal periods are often interrupted and/or cut short by their supervisors and/or dispatch directing or otherwise compelling them to return to work or in some instances, pick up more patients. Moreover, TLC Employees have to regularly monitor their company electronic devices and/or personal cell phones during meal periods and respond as necessary. On at least a few occasions, Plaintiff and, on information and belief, other TLC Employees have been reprimanded because they did not respond to their supervisors and/or dispatch’s calls on their personal cell phones during their meal periods. As a result,

1 Plaintiff and other TLC Employees regularly receive meal periods that are not free from TLC's control,
2 late, interrupted by work duties and/or less than thirty (30) minutes in length

3 89. Plaintiff asserts that TLC has a policy, practice, procedure, guideline, and/or culture of not
4 timely paying the required meal period premiums when a lawful meal period was not provided. Plaintiff
5 contends that despite not being provided with legally compliant meal periods, she and other TLC
6 Employees do not receive timely premium wages for unlawful meal periods.

7 90. TLC's unlawful conduct has caused Plaintiff and other TLC Employees to suffer, and
8 current TLC Employees will continue to suffer, damages in an amount which is presently unknown, but
9 which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at
10 trial.

11 91. Pursuant to Labor Code section 226.7(c) and IWC Order No. 9-2001, Plaintiff and other
12 TLC Employees are entitled to, and seek to recover the full amount of unpaid premium wages for unlawful
13 meal periods.

14 92. Pursuant to Labor Code section 218.6, Plaintiff and other TLC Employees are entitled to,
15 and now seek to recover, prejudgment interest on the amount of premium wages owed.

16 93. Plaintiff and all other TLC Employees are entitled to, and therefore seek, the penalty
17 outlined in Labor Code section 210 for the late payment of premium wages.

18 94. Plaintiff, on behalf of herself and other TLC Employees, is entitled to and seeks recovery
19 of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil
20 Procedure section 1021.5.

21 95. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
22 in the below prayer.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

AND/OR TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS

[Labor Code §§ 204, 210, 226.7, 558.1, and the

“Rest Periods” Section of IWC Wage Order No. 9-2001]

96. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

97. The “Rest Periods” section of IWC Wage Order No. 9-2001 provides,

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

98. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

99. In pertinent part, Labor Code section 226.7 states,

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for workday that the meal or rest

or recovery period is not provided.

100. Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

101. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

102. Labor Code section 558.1(a) provides for liability for an "other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours and days of work in any order of the Industrial Welfare Commission...or [Labor Code] section... 226.7." Labor Code section 558.1(b) provides that an "other person" is "a natural person who is an owner, director, officer, or managing agent" of an employer.

103. Plaintiff alleges TLC does not have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other TLC Employees to take a ten (10) minute, uninterrupted, off-duty rest period for every four (4) hours worked or major fraction thereof.

104. Plaintiff asserts that TLC Employees, such as herself, are not authorized and permitted to take lawful rest periods due to TLC's chronic understaffing, demand for services, and because there is no time allotted and/or built into the daily schedules to allow for rest periods. This is particularly true for TLC Employees, such as Plaintiff, who are the only persons on duty and have no one to relieve them. In addition, Plaintiff contends that TLC considers the time Plaintiff and other TLC Employees are waiting for a patient in between stops as their rest periods. Moreover, TLC Employees have to regularly monitor their company electronic devices and/or personal cell phones during rest periods and respond as necessary. As a result, Plaintiff and other TLC Employees receive rest periods that are not free from TLC's control, interrupted by work duties, and/or less than ten (10) minutes in length. On a majority of occasions, Plaintiff and other TLC Employees miss, or are otherwise compelled to forgo, their rest periods.

105. Plaintiff alleges that TLC does not have a policy, practice, procedure, guideline, and/or culture of timely paying premium wages for unlawful rest periods. Plaintiff asserts that despite not being

1 provided with legally compliant rest periods, she and other TLC Employees do not receive timely premium
2 wages for unlawful rest periods.

3 106. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant
4 Steve Abbo, was an owner, director, officer, or managing agent of TLC and violated or caused to be
5 violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 226.7 and is individually
6 liable for the violations of Wage Order No. 9-2001 and Labor Code section 226.7 as alleged above.

7 107. Due to TLC's unlawful conduct, Plaintiff and other TLC Employees have suffered, and
8 will continue to suffer, damages in an amount which is presently unknown, but which exceeds the
9 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

10 108. According to Labor Code section 226.7(c) and IWC Wage Order No. 9-2001, Plaintiff and
11 other TLC Employees are entitled to, and now seek to recover, the full amount of unpaid premium wages
12 for unlawful rest periods.

13 109. Plaintiff and all other TLC Employees are entitled to, and therefore seek, the penalty
14 outlined in Labor Code section 210 for the late payment of premium wages.

15 110. Pursuant to Labor Code section 218.6, Plaintiff and other TLC Employees are entitled to,
16 and now seek to recover, prejudgment interest on the amount of premium wages owed.

17 111. Plaintiff, on behalf of herself and other TLC Employees, is entitled to and seeks recovery
18 of reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code of Civil
19 Procedure section 1021.5.

20 112. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
21 in the below prayer.

22 **FOURTH CAUSE OF ACTION**

23 **(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)**

24 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

25 **[Labor Code §§ 558.1 and 2802]**

26 113. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
27 paragraphs of this Complaint.
28

114. Labor Code section 2802(a) provides in pertinent part, “[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.”

115. Labor Code section 2802(b) mandates,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

116. Labor Code section 2802(c) further states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

117. Labor Code section 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours and days of work in any order of the Industrial Welfare Commission...or [Labor Code] section... 2802.” Labor Code section 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer.

118. Plaintiff asserts that TLC has a policy, practice, procedure, guideline, and/or culture of failing to reimburse all TLC Employees, including Plaintiff, for all necessary business expenses that are incurred in the discharge of their job duties. For example, Plaintiff and other TLC Employees regularly use and often need to use their personal cell phones to communicate with their supervisors and dispatch regarding work-related issues throughout the work day. This is particularly true as the company-provided devices often do not work appropriately. Despite requiring TLC Employees to use their personal cell phones for work-related purposes, TLC does not reimburse TLC Employees, such as Plaintiff, a reasonable percentage of their cell phone bill, in violation of California law.

119. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant Steve Abbo, was an owner, director, officer, or managing agent of TLC and violated or caused to be violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 2802 and is individually liable for the violations of Wage Order No. 9-2001 and Labor Code section 2802 as alleged above

120. Plaintiff and other TLC Employees are entitled to, and now seek to recover, reimbursement of their necessary expenditures, plus interest on the applicable amount, pursuant to Labor Code section 2802(b).

121. Plaintiff and other TLC Employees are also entitled to, and seek recovery of reasonable attorneys' fees and costs under Labor Code sections 218.5 and 2802(c) and Code of Civil Procedure section 1021.5.

122. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described in the below prayer.

FIFTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Sub-Class Against All Defendants and Does 1-50)

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING

UPON SEPARATION OF EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES

[Labor Code §§ 201-203, 210, and 558.1]

123. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

124. Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

125. In pertinent part, Labor Code section 202 provides,

If 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.

126. Labor Code section 203(a) further mandates,

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

127. Labor Code section 210 provides that, "every person who fails to pay the wages of an

1 employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation
2 and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

3 128. Labor Code section 558.1(a) provides for liability for an “other person acting on behalf of
4 an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours
5 and days of work in any order of the Industrial Welfare Commission...or [Labor Code] section... 203.”
6 Labor Code section 558.1(b) provides that an “other person” is “a natural person who is an owner, director,
7 officer, or managing agent” of an employer.

8 129. Plaintiff alleges that TLC has a policy, practice, procedure, guideline, and/or culture of
9 failing to timely pay all wages due and owing upon separation of employment to all TLC Employees. For
10 instance, TLC has failed to timely pay former TLC Employees all minimum, regular, overtime and/or
11 double time wages for all hours worked and meal and/or rest period premium wages, in part due to the
12 aforementioned Labor Code violations.

13 130. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant
14 Steve Abbo, was, at all relevant times, an owner, director, officer, or managing agent of TLC and violated
15 or caused to be violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 203 and
16 is individually liable for the violations of Wage Order No. 9-2001 and Labor Code sections 201, 202, and
17 203 as alleged above.

18 131. As a result of TLC’s failure to timely and appropriately compensate TLC Employees for
19 all minimum, regular, overtime, double time, and premium wages, Plaintiff contends that TLC has a
20 policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay all wages due and
21 owed to former TLC Employees who separated from their employment during the relevant statutory
22 period. Plaintiff further contends that TLC has a policy, practice, procedure, guideline, and/or culture of
23 failing to pay the appropriate waiting time penalties to TLC Employees as provided under California law.

24 132. TLC knowingly failed to timely and appropriately compensate Plaintiff and other TLC
25 Employees for all minimum, regular, overtime and/or double time wages and meal and/or rest period
26 premium wages, as described herein.

133. Although TLC no longer employs a number of TLC Employees, TLC has yet to pay all wages owed to former TLC Employees, including Plaintiff, as required under California law, as well as the required waiting time penalties.

134. As a consequence of TLC's willful and deliberate refusal to render such wages, Plaintiff and other former TLC Employees are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203, as well as penalties pursuant to Labor Code section 210.

135. Plaintiff, on behalf of herself and other former TLC Employees, is also entitled to, and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

136. Plaintiff, on behalf of herself and other former LC Employees, requests further relief as described in the below prayer.

SIXTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code §§ 226, 226.3, 558.1, and the "Records" Section of IWC Wage Order No. 9-2001]

137. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

138. Labor Code section 226(a) states, in pertinent part,

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (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... (8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

139. The "Records" section of IWC Wage Order No. 9-2001 provides, in pertinent part,

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

140. An injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

141. Labor Code section 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

142. Labor Code section 226(e)(1) further provides,

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

143. According to Labor Code section 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

144. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

145. Labor Code section 558.1(a) provides for liability for an "other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours and days of work in any order of the Industrial Welfare Commission...or [Labor Code] section... 226."

1 Labor Code section 558.1(b) provides that an “other person” is “a natural person who is an owner, director,
2 officer, or managing agent” of an employer.

3 146. Plaintiff asserts that TLC has a policy, practice, procedure, guideline, and/or culture of
4 furnishing TLC Employees, including Plaintiff, with wage statements that do not comply with California
5 law. Plaintiff contends that the wage statements furnished to her and other TLC Employees do not include,
6 for instance, the total hours actually worked by the employee, all applicable hourly rates in effect during
7 the pay period, including the proper overtime rate, the corresponding number of hours worked at each
8 hourly rate by the employee, and the actual gross and net wages earned.

9 147. Due to the incorrect information on the furnished wage statements, TLC Employees, such
10 as Plaintiff, were unable to promptly and easily determine the total number of hours actually worked, the
11 applicable hourly rates in effect during the pay period, including the proper overtime rate, and/or the
12 corresponding number of hours worked at each hourly rate, among other things.

13 148. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant
14 Steve Abbo, was an owner, director, officer, or managing agent of TLC and violated or caused to be
15 violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 226 and is individually
16 liable for the violations of Wage Order No. 9-2001 and Labor Code section 226 as alleged above.

17 149. Plaintiff and other TLC Employees are entitled to, and now seek to recover, civil penalties
18 pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

19 150. Plaintiff and other TLC Employees are also entitled to, and seek recovery of liquidated
20 damages as provided by Labor Code section 226(e).

21 151. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and other TLC Employees
22 are entitled to, and therefore seek injunctive relief in order to ensure that TLC complies with Labor Code
23 section 226.

24 152. Plaintiff and other TLC Employees are further entitled to, and seek recovery of reasonable
25 attorneys’ fees and costs as provided under Labor Code section 226(e)(1) and 226(h) and Code of Civil
26 Procedure section 1021.5.

27 153. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
28 in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against All Defendants and Does 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

[Labor Code §§ 226, 1174, 1174.5, 558.1,

and the “Records” Section of IWC Wage Order No. 9-2001]

154. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

155. Labor Code section 226(a) provides, in pertinent part,

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

156. Labor Code section 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code section 1174(d) further provides, in pertinent part, “[e]very person employing labor in this state shall...[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, ..., employees employed at the respective plants or establishments.”

157. Labor Code section 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulation minimum wages or hours and days of work in any order of the Industrial Welfare Commission...or [Labor Code] section... 226.” Labor Code section 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer.

158. The “Records” section of IWC Wage Order No. 9-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

159. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per

1 pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a
2 violation of Labor Code section 1174(d).

3 160. Labor Code section 226(e)(1) further provides,

4 An employee suffering injury as a result of a knowing and intentional
5 failure by an employer to comply with subdivision (a) [of Labor Code §
6 226] is entitled to recover the greater of all actual damages or fifty dollars
7 (\$50) for the initial pay period in which a violation occurs and one hundred
dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
is entitled to an award of costs and reasonable attorney's fees.

8 161. Plaintiff alleges that TLC, as described herein, has a policy, practice, procedure, guideline,
9 and/or culture of intentionally and willfully failing to maintain accurate payroll and/or employee records
10 that properly show, among other things, the total number of hours actually worked by TLC Employees,
11 the proper beginning and end of each work period, the beginning and end of each meal period, all earned
12 wages, and all wages paid to Plaintiff and other TLC Employees.

13 162. In addition, Plaintiff alleges that during the relevant time period, specifically Defendant
14 Steve Abbo, was an owner, director, officer, or managing agent of TLC and violated or caused to be
15 violated the provisions of Wage Order No. 9-2001, as well as Labor Code section 226 and is individually
16 liable for the violations of Wage Order No. 9-2001 and Labor Code section 226 as alleged above.

17 163. Plaintiff and other TLC Employees have suffered, and continue to suffer, injuries and
18 damages as a consequence of TLC's deliberate failure to maintain accurate records as required by the
19 Labor Code. Specifically, Plaintiff and other TLC Employees are denied their legal right and protected
20 interest in having accurate and complete payroll and employment records available to them.

21 164. Plaintiff and other TLC Employees are entitled to, and now seek damages and penalties, as
22 outlined in Labor Code section 226(e)(1) and 1174.5.

23 165. Plaintiff, on behalf of herself and other TLC Employees, is entitled to, and seeks recovery
24 of reasonable attorneys' fees and costs as provided by Labor Code section 226(e)(1) and Code of Civil
25 Procedure section 1021.5.

26 166. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
27 in the below prayer.

28 ///

EIGHTH CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class Against All Defendants and Does 1-50)

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

[Bus. & Prof. Code §§ 17200 *et seq.*]

167. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

168. As codified in Business & Professions Code sections 17200 *et seq.*, California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

169. A cause of action may be brought under the UCL if a practice violates some other law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a *per se* violation of Business & Professions Code sections 17200 *et seq.* (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 "unlawful" violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

170. The "unfair" prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the California Supreme Court, the "unfair standard" is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc.*, 20 Cal.4th at 180-81.)

171. Under the UCL, a "fraudulent" business act or practice is one where "members of the public are likely to be deceived." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is "couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information." (*Ibid.*)

172. As discussed herein, TLC's business practices violate all three prongs of California's UCL.

///

///

Unlawful

173. As described herein, TLC violated the Labor Code by, among other things, refusing to properly compensate TLC Employees for all time worked, including overtime and double time wages. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc'ns, Inc.*, *supra*, 20 Cal.4th at 180.) TLC further violated California law by failing to provide legally compliant meal and/or rest periods and/or pay premium wages in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to reimburse employees for necessary business expenditures; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. Therefore, TLC has clearly engaged in unlawful business practices pursuant to Business & Professions Code sections 17200 *et seq.*

Unfair

174. TLC's policy, practice, procedure, guideline, and/or culture of requiring TLC Employees to perform job duties while off-the-clock is inherently unfair because TLC knowingly prevents TLC Employees from receiving adequate compensation for all time actually worked, in violation of California's policy of prompt payment of wages.

175. TLC's policy, practice, procedure, guideline, and/or culture of failing to provide TLC Employees, including Plaintiff, with legally compliant meal and/or rest periods, as a result of requiring TLC Employees to work through their meal and/or rest periods and be readily available during their meal and/or rest periods, constitutes an unfair practice because TLC knowingly strips TLC Employees of their rights under the Labor Code.

176. TLC also violates the unfair prong of the UCL by failing to pay premium wages to TLC Employees for unlawful meal and/or rest periods because TLC knowingly denies TLC Employees, including Plaintiff, their legal right to one additional hour of pay at their regular rate of pay for each workday a meal and/or rest period was not provided.

177. TLC's policy, practice, procedure, guideline, and/or culture of requiring TLC Employees to use their own personal cell phones, in the discharge of their job duties, without reimbursement, is

1 inherently unfair because TLC Employees, including Plaintiff, incur significant costs in connection with
2 the work performed on behalf of TLC.

3 178. TLC's policy, practice, procedure, guideline, and/or culture of failing to provide TLC
4 Employees with accurate itemized wage statements is a violation of the unfair prong of the UCL because
5 TLC knowingly denies TLC Employees their legal right and protected interest in readily ascertaining their
6 total number of hours worked and the applicable hourly rates in effect during the pay period.

7 179. Additionally, TLC's failure to timely pay other TLC Employees all minimum, regular,
8 overtime, and/or double time wages and/or premium wages upon separation of employment violates the
9 unfair prong of the UCL because TLC knowingly deprived TLC Employees of timely compensation of
10 their final earned wages, in violation of California law.

11 Fraudulent

12 180. TLC's policy, practice, procedure, guideline, and/or culture of improperly considering the
13 work that TLC Employees, including Plaintiff, perform while off-the-clock as non-compensable time
14 constitutes a fraudulent business practice as it knowingly and intentionally causes TLC Employees to not
15 receive all minimum, regular, overtime and/or double time wages earned for all time actually worked as
16 mandated by California law, as well as premium wages for non-compliant meal and/or rest periods.

17 181. Additionally, TLC's policy, practice, procedure, guideline, and/or culture of providing
18 Plaintiff and other TLC Employees with inaccurate wage statements constitutes a fraudulent business
19 practice as Plaintiff and other TLC Employees are likely to be, and are actually deceived, as to whether
20 they are paid for all time worked.

21 182. TLC's practice of failing to maintain accurate employee and/or payroll records is also a
22 fraudulent business practice as the inaccuracies intentionally mislead TLC Employees as to their total
23 hours worked and wages earned.

24 183. As a direct and proximate result of TLC's unlawful, unfair, and fraudulent business
25 practices, Plaintiff and other TLC Employees have suffered injury-in-fact and have lost wages rightfully
26 owed to them.

27 184. Through its unlawful, unfair, and fraudulent conduct, TLC has been unjustly enriched by
28 receiving and continuing to receive benefits and profits at the expense of TLC Employees. Therefore,

1 pursuant to Business & Professions Code sections 17200 *et seq.*, TLC should be enjoined from this activity
2 and made to disgorge all ill-gotten gains and restore Plaintiff and other TLC Employees the wages
3 wrongfully withheld from them.

4 185. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has continued, and
5 there is no indication that TLC will refrain from such activity in the future. Plaintiff believes and alleges
6 that if TLC is not enjoined from the conduct described herein, TLC will continue to violate California law
7 at the expense of TLC Employees. Accordingly, Plaintiff requests that the court issue a preliminary and
8 permanent injunction against TLC.

9 186. Plaintiff, on behalf of herself and other TLC Employees, requests further relief as described
10 in the below prayer.

11 **NINTH CAUSE OF ACTION**

12 **(By Plaintiff in her Representative Capacity Against All Defendants and Does 1-50)**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

14 **[Labor Code §§ 2698 *et seq.*]**

15 187. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
16 paragraphs of this Complaint.

17 188. Pursuant to Labor Code sections 2698 *et seq.*, any provision of the Labor Code that
18 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
19 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered
20 through a civil action brought by an aggrieved employee on behalf of himself or herself and other current
21 or former employees pursuant to the procedures specified in Labor Code section 2699.3. Such civil
22 penalties are in addition to any other relief provided for under the Labor Code and must be allocated
23 seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees,
24 pursuant to section 2699(i).

25 189. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed
26 notice of her claims with the LWDA, TLC was Plaintiff's and all other TLC Employees' employer or
27 person acting on behalf of TLC Employees' employer either individually or as an officer, agent, or
28 employee of another person, within the meaning of Labor Code sections 558(a) and 1197.1, who paid or

1 caused to be paid to any employee a wage less than the minimum fixed by California state law, and as
2 such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to
3 Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

4 190. Plaintiff is an “aggrieved employee” under the PAGA because she is employed by the
5 alleged violator, TLC, and has had one or more of the alleged violations committed against her, and
6 therefore is properly suited to represent the interests of other TLC Employees. (See *Huff v. Securitas*
7 *Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018)
8 30 Cal.App.5th 504, 519.)

9 191. Plaintiff alleges that all other TLC Employees are also “aggrieved employees” under the
10 PAGA as TLC employed them and all TLC Employees experienced one or more of the alleged violations
11 outlined herein.

12 192. Pursuant to Labor Code sections 2698 *et seq.*, Plaintiff has exhausted her administrative
13 remedies because she complied with the notice requirements outlined in Labor Code section 2699.3. On
14 June 14, 2021, Plaintiff submitted notice to the LWDA and TLC informing them of TLC’s alleged Labor
15 Code violations pursuant to PAGA. (Exhibit 1.) Under the statute, the LWDA had 65 days to provide
16 notice of whether it intended to investigate the alleged violations. To date, the LWDA has not notified
17 Plaintiff of its intent investigate the alleged violations. Plaintiff thus has the right to pursue, and does
18 pursue, her claims under PAGA in a representative capacity pursuant to Labor Code sections 2698 *et*
19 *seq.*

20 193. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, the claims brought
21 under the PAGA are not subject to the requirements for class certification and thus Plaintiff does not seek
22 to certify the claims brought under the PAGA.

23 194. As set forth herein, TLC has committed, and continues to commit, numerous violations for
24 which the Labor Code and IWC Wage Order No. 9-2001 entitles Plaintiff in her representative capacity,
25 to recover civil penalties, on behalf of herself and all other TLC Employees and the general public, as well
26 as attorneys’ fees and costs, against TLC for the alleged violations of the Labor Code, described herein.

1 195. Plaintiff, in her representative capacity, on behalf of herself and all other TLC Employees,
2 is entitled to and thus seeks to recover civil penalties through a representative action based on TLC's
3 violations of the following Labor Code and/or IWC Wage Order provisions:

- 4 a. Failure to timely pay minimum, regular, overtime and/or double time wages in
5 violation of Labor Code sections 204, 210, 510, 558, 558.1, 1194, 1194.2, 1197,
6 1197.1, 1198, 1199 and the "Minimum Wages" and "Hours and Days of Work"
7 sections of IWC Wage Order No. 9-2001;
- 8 b. Failure to provide the opportunity to take legally compliant meal periods and/or
9 timely pay premium wages for non-compliant meal periods in violation of Labor
10 Code sections 204, 210, 226.7, 512, 558.1, and the "Meal Periods" section of IWC
11 Wage Order No. 9-2001;
- 12 c. Failure to authorize and permit legally compliant rest periods and/or timely pay
13 premium wages for non-compliant rest periods in violation of Labor Code sections
14 204, 210, 226.7, 558.1, and the "Rest Periods" section of IWC Wage Order No. 9-
15 2001;
- 16 d. Failure to reimburse for necessary business expenses in violation of Labor Code
17 sections 558.1 and 2802;
- 18 e. Failure to timely pay all wages due and owed upon separation of employment
19 and/or pay waiting time penalties in violation of Labor Code sections 201-203, 210,
20 and 558.1;
- 21 f. Failure to furnish accurate itemized wage statements in violation of Labor Code
22 sections 226, 226.3, 558.1, and the "Records" section of IWC Wage Order No. 9-
23 2001; and
- 24 g. Failure to maintain accurate records in violation of Labor Code sections 226, 558.1,
25 1174, 1174.5 and the "Records" section of IWC Wage Order No. 9-2001.

26 196. Labor Code section 210 provides that any person who fails to pay wages as provided in
27 Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil
28 penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent

1 violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if
2 the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in her representative capacity,
3 seeks the civil penalty imposed by Labor Code section 210 on behalf of herself and all other TLC
4 Employees.

5 197. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an
6 initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor
7 Code section 226(a). Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor
8 Code section 226.3 on behalf of herself and all other TLC Employees.

9 198. For violations of Labor Code sections 510 and 512, in addition to any other recovery
10 provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid
11 employee for the initial violation and \$100 per pay period for each underpaid employee for each
12 subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision
13 regulating hours and days of work in any order of the IWC.¹ Plaintiff, in her representative capacity,
14 seeks the civil penalty imposed by Labor Code section 558 on behalf of herself and all other TLC
15 Employees.

16 199. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
17 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per
18 pay period, per employee that would be imposed pursuant to Labor Code section 2699(f) for a violation
19 of Labor Code section 1174(d). Plaintiff, in her representative capacity, seeks the civil penalty imposed
20 by Labor Code section 1174.5 on behalf of herself and all other TLC Employees.

21 200. Labor Code section 1197.1 imposes a civil penalty of \$100 for each underpaid employee
22 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each
23 underpaid employee for each pay period for which the employee is underpaid for paying or causing an
24 employee to be paid a wage less than the minimum wage. Plaintiff, in her representative capacity, seeks
25 the civil penalty imposed by Labor Code section 1197.1 on behalf of herself and all other TLC Employees.

26
27
28 ¹ Plaintiff expressly disclaims the recovery of underpaid wages on behalf of herself and all other TLC Employees.

201. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 558.1, 1174(c) and (d), 1194, 1194.2, 1197, 1198, and 1199. Plaintiff and other TLC Employees are entitled to, and therefore seek the above-described civil penalty.

202. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of herself and all other TLC Employees, is entitled to, and therefore seeks attorneys' fees and costs.

203. Plaintiff, in her representative capacity on behalf of herself and all other TLC Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

204. Plaintiff, in her representative capacity on behalf of herself and all other TLC Employees, requests further relief as described in the prayer below.

PRAYER FOR RELIEF

Plaintiff prays for judgement against all Defendants in favor of the class and the representative action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code section 2699(f);
- d. For all wages and benefits due to Plaintiff and all other TLC Employees pursuant to California law;
- e. For damages, pursuant to Labor Code section 226(e)(1), Civil Code section 3281, and/or other applicable law;

- f. For all minimum, regular, overtime and/or double time wages owed pursuant to Labor Code sections 510, 558, 558.1, 1194, 1197.1, and/or other applicable law;
- g. For premium wages pursuant to Labor Code section 226.7, and/or other applicable law;
- h. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;
- i. For reimbursement of necessary business expenditures pursuant to Labor Code section 2802, and/or other applicable law;
- j. For all liquidated damages, pursuant to Labor Code sections 1194.2, 1197.1, and/or other applicable law;
- k. For any and all penalties available for the Labor Code violations alleged herein, including but not limited to penalties under Labor Code sections 203, 210, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 1199, and/or other applicable law;
- l. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- m. For injunctive relief, pursuant to Labor Code section 226(h) and Business & Professions Code section 17203, and/or other applicable law;
- n. For restitution for TLC's unfair, unlawful, and fraudulent business practices as provided by Labor Code section 1197.1 and Business & Professions Code section 17203 and/or other applicable law;
- o. For reasonable attorneys' fees and costs of suit pursuant to Labor Code sections 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194(a), 1194.2, 1197.1, 2802, 2699(g)(1), Code of Civil Procedure section 1021.5, the "common fund" theory, the "substantial benefit" theory, and/or other applicable law, theory or doctrine;
- p. For a declaratory judgment that TLC violated Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and 2698 *et seq.*; the "Hours and Days of Work," "Minimum Wages,"

“Records,” “Meal Periods,” and “Rest Periods” sections of IWC Wage Order 9-2001; and Business and Professions Code sections 17200 *et seq.*;

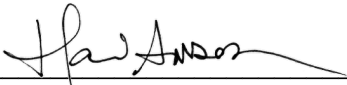
- q. For pre- and post- judgment interest as provided by California law;
- r. For appropriate equitable relief pursuant to California law; and
- s. For any other relief, the Court may deem as just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

Dated: September 24, 2021

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
ALYSSA L. SMITH
Attorneys for Plaintiff Carmelita Coaston

EXHIBIT 1

June 14, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Xavier Calvachi
ocalvachi@grahamhollis.com
619.906.4014 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

TLC Medical Transport, LLC
6312 Riverdale Street
San Diego, CA 92120

TLC Medical Transport, LLC
c/o Corporation Service Company dba CSC – Lawyers
Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Carmelita Coaston's Wage and Hour Claims Against TLC Medical Transport, LLC.

Dear California Labor and Workforce Development Agency and TLC Medical Transport, LLC:

Please be advised that Carmelita Coaston ("Claimant") has retained our firm, **GrahamHollis APC**, to represent her for various claims against TLC Medical Transport, LLC (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations the Company committed against her and all other current or former non-exempt employees who worked for the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent all other current or former non-exempt employees who worked for the Company at any of the Company's California locations, whether

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Xavier Calvachi

Alyssa Smith

*Provisionally Licensed Lawyer

hired directly by the Company or hired by the use of an employment agency, during the relevant time period (referred to herein as the “Aggrieved Employees”). All Aggrieved Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein.

FACTUAL BACKGROUND

TLC Medical Transport, LLC is a provider of non-emergency wheelchair and gurney transportation based out of San Diego and operating throughout San Diego County. TLC Medical Transport, LLC provides services including, but not limited to, transportation to and from hospitals, dialysis centers, nursing homes, and doctor’s offices, gurney van services, wheelchair van services, and ambulatory van services. TLC Medical Transport, LLC is organized in the state of California and has its headquarters located in San Diego, CA.

Claimant has worked for the Company as a Driver from December 2020 to the present. Claimant’s job duties include driving vans to pick up and drop off patients at various locations throughout San Diego County, among other things. At all relevant times, Claimant has been classified as a non-exempt employee, earns an hourly rate of \$14.00 per hour and is paid on a biweekly basis. Claimant typically works six (6) days per week, Monday through Saturday, usually starting around 8:00 a.m. and ending anywhere from 4:00 p.m. to 9:00 p.m., often working overtime and double time.

Claimant contends that during the relevant time period, the Company has employed other Aggrieved Employees in various non-exempt positions who earn an hourly wage and regularly work at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant are also applicable to all other Aggrieved Employees.

Claimant alleges that the Company denies Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company fails to timely pay all minimum, regular, overtime, and/or double time wages to all Aggrieved Employees, including Claimant; fails to provide Claimant and other Aggrieved Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; fails to reimburse Claimant and other Aggrieved Employees for all necessary business expenses; fails to timely pay Aggrieved Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; fails to furnish all Aggrieved Employees, including Claimant, with accurate itemized wage statements; and fails to maintain accurate employment records.

Claimant contends that the Company has a policy, practice, procedure, guideline and/or culture of not timely paying all minimum, regular, overtime, and/or double time wages to Claimant

and Aggrieved Employees for all hours actually worked. For instance, Claimant and Aggrieved Employees regularly perform work for the Company and/or are under the control of the Company while they are off-the-clock for a meal period. However, the Company considers such time as non-compensable time and therefore fails to provide any remuneration to Claimant and Aggrieved Employees. In addition, the Company fails to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular, overtime, and/or double time wages owed because the Company has an illegal policy of shaving time off and/or editing time from Claimant's and other Aggrieved Employees' timecards. For instance, Claimant contends that she has noticed on several occasions that the hours shown on her pay stubs do not match up to the hours shown on her timesheets and although she has brought this issue to the attention of her direct supervisors, nothing has been done to resolve this. Further, Claimant contends that the Company promised to pay her and, on information and belief, other Aggrieved Employees, additional wages as hazard pay as a result of working through the COVID-19 pandemic, however, to this day, Claimant has not received all hazard pay wages that were promised. As a result, the Company has failed to timely pay all minimum, regular, overtime, and/or double time wages for all time actually worked.

Claimant contends that the Company has a policy, practice, procedure, guideline, and/or culture of not providing Aggrieved Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. For instance, despite regularly working more than five hours per day, Claimant and other Aggrieved Employees are often instructed or otherwise compelled to work through their meal periods due to the Company's chronic understaffing and the demand for services. This is particularly true when the Aggrieved Employee is the only person on duty on a given route and there is no one available to relieve them. Additionally, due in large part to the Company's chronic understaffing and the demand for services, Claimant and other Aggrieved Employees regularly receive meal periods after their 6th hour of work. Further, even when Claimant and other Aggrieved Employees receive timely meal periods, their meal periods are often interrupted and/or cut short by their supervisors and/or dispatch directing or otherwise compelling them to return to work or in some instances, pick up more patients. Moreover, Aggrieved Employees have to regularly monitor their company electronic devices and/or personal cell phones during meal periods and respond as necessary. On at least a couple occasions, Claimant and, on information and belief, other Aggrieved Employees have been reprimanded because they did not respond to their supervisors and/or dispatch's calls on their personal cell phones during their meal periods. As a result, Claimant and other Aggrieved Employees receive meal periods that are not free from the Company's control, late, on-duty, interrupted by work duties, and/or less than thirty (30) minutes in length.

Claimant also contends that the Company has a policy, practice, procedure, guideline, and/or culture of not authorizing and permitting Claimant and Aggrieved Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. For instance, Claimant contends that Aggrieved Employees, such as herself, are not

authorized and permitted to take lawful rest periods because of the Company's chronic understaffing, demand for services, and because there is no time allotted and/or built into the daily schedules to allow rest periods. This is particularly true for Aggrieved Employees, such as Claimant, who are the only persons on duty and have no one to relieve them. In addition, Claimant contends that the Company considers the time Claimant and other Aggrieved Employees are waiting for a patient in between stops as their rest periods. Moreover, Aggrieved Employees have to regularly monitor their company electronic devices and/or personal cell phones during rest periods and respond as necessary. As a result, Claimant and other Aggrieved Employees are not authorized or permitted to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof.

Claimant alleges that the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. For instance, although Claimant and other Aggrieved Employees do not receive legally compliant meal and/or rest periods, the Company does not consistently pay Claimant and, on information and belief, other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees are not provided with a legally compliant meal and/or rest period.

Claimant contends that the Company has a policy, practice, procedure, guideline and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary business expenses that are incurred in the discharge of their job duties. For instance, Claimant and other Aggrieved Employees regularly use and often need to use their personal cell phones to communicate with their supervisors and dispatch regarding work-related issues throughout the work day. This is particularly true as the company-provided devices often do not work appropriately. Despite requiring Aggrieved Employees to use their personal cell phones for work-related purposes, the Company does not reimburse Aggrieved Employees, such as Claimant, a reasonable percentage of their cell phone bill, in violation of California law.

Claimant contends that the Company has a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the mandated waiting time penalties for any late payment of final wages. For instance, the Company has failed to timely pay former Aggrieved Employees all minimum, regular, overtime, and/or double time wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, on information and belief, that former Aggrieved Employees have not yet received the required waiting time penalties for the Company's failure to immediately pay all wages due and owing upon separation of employment. Thus, the Company has violated California law by not timely paying all wages due and owing upon separation of employment and/or the required waiting time penalties.

Claimant further contends that the Company has a policy, practice, procedure, guideline and/or culture of failing to furnish Aggrieved Employees with accurate itemized wage statements. Claimant alleges that the wage statements furnished to her and other Aggrieved Employees do not correctly show, and still do not correctly show, the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net wages actually earned. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees are unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company has a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, guidelines, and/or culture, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Aggrieved Employees' actual time worked, the proper beginning and end time of each work period, the meal periods, the actual wages earned and paid, and the applicable rates of pay, among other things, in violation of California law.

Due to the foregoing Labor Code violations, the Company denies Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of herself and all other Aggrieved Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of herself and other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts, omissions, and/or admissions of each and every one of the others, including the Company, in proximately causing the Labor Code violations, wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME, AND/OR
DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].) The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very 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.”

Labor Code § 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime and double time compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay

for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

Labor Code § 1197.1 states,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, overtime, and/or double time wages to Claimant and, on information and belief, other Aggrieved Employees for all hours actually worked. Therefore, the Company has failed to pay at least minimum wages, contractual wages, the legal overtime, and/or double time compensation for these hours Claimant and other Aggrieved Employees worked.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7 and 512, and the “Meal Periods” section of the applicable IWC Wage Order)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee....

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall

be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company has failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR COMPENSATION IN LIEU THEREOF

(Labor Code §§ 204 and 226.7, and the “Rest Periods” section of the applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company has failed to authorize and permit Claimant and, on information and belief, other Aggrieved Employees to take an off-duty, uninterrupted rest period of at least 10-minutes for every four hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, "[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."

Labor Code § 2802(b) states,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary business expenses that are incurred in the discharge of their job duties.

Claimant will pursue all available remedies for the Company's violations on behalf of herself and all other Aggrieved Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION
OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[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.

Labor Code § 203(a) further states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Company has violated these Labor Code sections by not timely paying to former Aggrieved Employees all minimum, regular, overtime, and/or double time wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Company, on information and belief, also did not pay the required waiting time penalties for the late payment of wages. Thus, the Company has violated California law.

Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former Aggrieved Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (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...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company has failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned.

Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1174 requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174 further requires,

[e]very person employing labor in this state [to] keep, 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 [] and the wages paid. Such records are to be kept according to the rules established by the commission for such purpose and must be kept on file for no less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)

[of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company has violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper beginning and end of each work period, meal period, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid.

Claimant will pursue all available remedies against the Company for its violations of the law on behalf of herself and all Aggrieved Employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 210, 226(f), 226.3, 558, 558.1, 1174.1, 1197.1, 1198.5, 2699(f), 6317 and 6342)

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

For violations of Labor Code § 1198.5, Labor Code § 1198.5(k) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor

Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6400 *et seq.* and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following,

[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

As set forth above, the Company has violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Aggrieved Employees all regular, minimum, overtime, and/or double time wages, and meal and rest period premium wages, as required under the Labor Code and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company’s violations on behalf of herself and all Aggrieved Employees to the extent allowed by law.

**ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND
PENALTIES**

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Aggrieved Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Xavier Calvachi', with a stylized flourish at the end.

Xavier Calvachi