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Individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

JUAN RAMIREZ, an individual,

Plaintiff,

vs.

CALIFORNIA HOTEL HOSPITALITY
SERVICES, INC., a corporation; TRINET HR
XI, INC., a corporation; and DOES 1 through 5,
inclusive,

Defendants.

Case No.: 21STCV22051

*Assigned for All Purposes to the Honorable
Judge Barbara M. Scheper in Dept. 30*

FIRST AMENDED COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 2. Unpaid Overtime Wages**
- 3. Unpaid Wages and Failure to Pay Minimum Wages**
- 4. Failure to Reimburse and Indemnify for Expenditures**
- 5. Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 6. Violation of Unfair Competition Law**
- 7. Failure to Provide Compliant Itemized Wage Statements**
- 8. Labor Code § 203 Waiting Time Penalties**
- 9. Harassment and Hostile Work Environment in Violation of the FEHA**
- 10. Failure to Prevent Harassment in Violation of the FEHA**
- 11. Private Attorneys General Act**

Complaint Filed: June 14, 2021

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

08/18/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Tresvamt Deputy

Plaintiff, JUAN RAMIREZ, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California.

2. This Court also has jurisdiction over each named corporate defendant because they purposely availed themselves of this Court's jurisdiction by employing Plaintiff as a joint-employer in the County of Los Angeles, by employing Plaintiff as an employer operating as a joint-enterprise in the County of Los Angeles, by conducting business within the County of Los Angeles as agents, instrumentalities and alter egos of each other. Plaintiff's claims arise out of and are related to all Defendants' contacts with California.

3. Venue is proper in this Court because some of the violations of law and unlawful practices alleged herein occurred in the County of Los Angeles, and the records relevant to the alleged unlawful practices are maintained and administered in the County of Los Angeles.

PARTIES

4. Plaintiff is an individual who at, all relevant times, has resided in the State of California.

5. Defendant CALIFORNIA HOTEL HOSPITALITY SERVICES, INC. ("CHHS"), is a corporation that conducted, and is conducting, business in the State of California. CHHS registered the address 6345 Balboa Blvd. Suite 375, Encino, CA 91316 with the California Secretary of State as its principal place of business in California.

6. Defendant TRINET HR XI, INC. ("TRINET"), is a corporation who, at all relevant times, has resided in the State of California. TRINET registered the address One Park Place, Suite 600, Dublin, CA 94568 with the California Secretary of State as its principal place of business in California.

7. Plaintiff is ignorant of the true names and capacities of all the Defendants sued herein as DOES 1-5, inclusive, and therefore sues these Defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and, on that basis, alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant.

1 8. All the corporate Defendants, including DOES 1-5, are alleged to be co-conspirators with
2 each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
3 wrongs as alleged in this Complaint.

4 9. Plaintiff is informed and believes and thereupon alleges that each corporate Defendant
5 entered into a conspiracy and agreement with the other corporate Defendants and/or subsequently joined
6 said conspiracy and ratified the prior acts and conduct of the corporate Defendants who had previously
7 entered into said conspiracy. Plaintiff is currently unaware of when each corporate Defendant joined
8 said conspiracy and, upon information and belief, alleges that all corporate Defendants have knowingly,
9 maliciously, and willfully entered into said conspiracy, which continues until this day. The purposes of
10 this ongoing conspiracy include, but are not limited to, the wrongs alleged herein. All corporate
11 Defendants' acts and failures to act as alleged herein were perpetrated in furtherance of the ongoing
12 conspiracy.

13 10. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
14 each corporate Defendant was completely dominated and controlled by its, his or her co-corporate
15 Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the
16 wrongful acts of the others.

17 11. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
18 each of the corporate Defendants was the agent, employee and/or joint venturer of, or working in concert
19 with, co-corporate Defendants and was acting within the course and scope of such agency, employment,
20 and/or joint venture or concerted activity. To the extent that said conduct and omissions were
21 perpetrated by certain corporate Defendants, Plaintiff is informed and believes and thereupon alleges
22 that the remaining corporate Defendant and/or Defendants confirmed and ratified said conduct and
23 omissions.

24 12. Whenever and wherever reference is made to individuals who are not named as
25 defendants in this Complaint but are or were employees and/or agents of Defendants, such references
26 shall be deemed to mean that such individuals at all relevant times acted on behalf of the corporate
27 Defendant within the scope of their employment.

14. Plaintiff is informed and believes and, on that basis, alleges that at all times relevant herein, the corporate Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

11 15. At all times pertinent hereto, California Civil Code section 3294(a) provided that as to
12 defendants who have been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual
13 damages, may recover exemplary damages for the sake of example and by way of punishing said
14 defendants.

15 16. At all times pertinent hereto, California Civil Code section 3294(a) provided that an
16 employer shall be liable for damages pursuant to subdivision (a) if the employer authorized or ratified
17 the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud,
18 or malice.

17. At all times relevant to this action, the corporate Defendant, and each of them were an employer, joint-employer, or integrated enterprise that regularly employed five or more persons within the meaning of the California Fair Employment and Housing Act (“FEHA”) at California Government Code section 12926(d).

18. At all times relevant to this action, the corporate Defendant, and each of them were an employer, joint-employer, or integrated enterprise that regularly employed fifty or more persons within the meaning of the California Family Rights Act (“CFRA”).

26 **GENERAL ALLEGATIONS**

19. Plaintiff began working for Defendants in or about November 2012 to June 25, 2020, as an hourly non-exempt maintenance worker. During Plaintiff's employment, Plaintiff frequently worked

1 over eight (8) hours per day and over forty (40) hours per week, without being paid overtime wages.
2 During Plaintiff's employment, Plaintiff frequently worked many times outside of his normal work
3 hours and was not paid wages for that time worked. During Plaintiff's employment, he incurred
4 reasonable business expenses of which Defendant was aware. Defendant did not pay Plaintiff for those
5 reasonable business expenses. During Plaintiff's employment, Defendant did not provide him with
6 uninterrupted rest breaks or meal periods.

7 20. In June 2020, Plaintiff had 10 days of accrued vacation time available. On June 16, 2020,
8 Plaintiff worked. On June 17, 2020, Plaintiff started his first day of vacation and was expected to end on
9 June 30, 2020. On June 24, 2020, Plaintiff notified Defendant that he intends to resign his employment
10 effective June 30, 2020. On July 3, 2020, Defendant sent Plaintiff a letter informing him that his
11 employment was terminated effective June 25, 2020. Defendant never paid Plaintiff June 16, 2020.
12 Defendant never paid Plaintiff for his accrued vacation time.

13 21. Plaintiff's final pay for pay period June 1, 2020, to June 15, 2020, did not include the
14 unpaid regular and overtime hours worked. Defendant never paid Plaintiff his final pay for pay period
15 June 16, 2020, to June 30, 2020. Consequently, Defendant never paid all of Plaintiff's final wages.

16 22. During the last year of Plaintiff's employment, Defendant's management created a hostile
17 work environment for Latinos. Defendant's management referred to all Latinos as Mexicans. Defendant's
18 management would frequently be unable to find his tools. Defendant's management would say things
19 such as:

- 20 • "Fucking Mexicans stealing tools."
- 21 • "Mexicans steal the tools to do their own work at home."

22 23. Defendant's management would also tell the Latino employees to either learn English or
23 go back to their country. Defendant's management would also refer to homeless people in the street as
24 friends of the Latino workers.

25 24. Plaintiff was offended by the hostile work environment.

26 25. On June 14, 2021, Plaintiff filed an administrative charge against Defendant CHHS with
27 the California Department of Fair Employment and Housing, No. 202106-13869614, and obtained a
28 Right-to-Sue notice.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

26. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

27. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

28. "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." Lab. Code § 510(a).

29. On numerous occasions during Plaintiff's employment, he worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

30. Any "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation." Lab. Code § 558.1(a).

31. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

32. Plaintiff has been damaged in an amount equal to the compensation to which he was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

33. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

34. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

SECOND CAUSE OF ACTION

UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

35. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

36. Any employee receiving less than the legal overtime compensation, pursuant to the Fair Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including liquidated damages and reasonable attorney's fees. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled to liquidated damages in amount equal to unpaid overtime wages.

THIRD CAUSE OF ACTION

UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

37. "Wages" includes all amounts for labor performed by employees of every description, including commission basis. Lab. Code § 200(a).

38. "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Lab. Code § 204(a).

39. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

40. Defendants failed to pay Plaintiff's wages for the off the clock work. As a result, Defendants failed to pay Plaintiff the legal minimum wage.

1 41. Plaintiff has been harmed by Defendants' failure to minimum wages due in an amount
2 according to proof at trial.

3 42. An employee receiving less than the legal minimum wage or legal overtime
4 compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this
5 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
6 costs of suit." Lab. Code § 1194.

7 43. An employee receiving less than the minimum wage set by an IWC order "shall be
8 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
9 thereon." Lab. Code § 1194.2.

10 44. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due,
11 liquidated damages, interest, and attorneys' fees.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES**

14 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

15 45. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though
16 set forth herein in full again.

17 46. California Labor Code § 2802(a) provides that "An employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties"

20 47. Labor Code "Section 2802 is designed to prevent employers from passing their operating
21 expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

22 48. Defendants violated Labor Code Section 2802 by passing on their operating expenses to
23 Plaintiff, in violation of Labor Code § 2802(a).

24 49. Plaintiff has been damaged by Defendant's failure to pay or reimburse work expenses in
25 an amount according to proof at trial.

26 50. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is
27 entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest
28 thereon, and an award of attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7

(AGAINST ALL DEFENDANTS AND DOES 1-5)

51. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

52. California Labor Code section 226.7 provides that “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.” Lab. Code § 226.7(b).

53. “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 each workday that the meal or rest or recovery period is not provided.” Lab. Code § 226.7(c).

54. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 4-2001 section 12, provide that “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 net rest time per four (4) hours or major fraction thereof.”

55. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 4-2001 section 11, provide that “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.”

56. California Labor Code section 512(a) provides that 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

1 period of not less than 30 minutes, except that if the total work period per day of the employee is no
2 more than six hours, the meal period may be waived by mutual consent of both the employer and
3 employee.

4 57. Defendants regularly required Plaintiff to work without being provided the opportunity to
5 have uninterrupted rest breaks. Defendants regularly did not allow him the opportunity to be relieved of
6 his duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing him with rest
7 breaks.

8 58. Defendants regularly required Plaintiff to work more than 5 hours without being provided
9 with a duty-free meal period with relief of all duties. Defendants did not compensate Plaintiff in lieu of
10 providing him with meal breaks.

11 59. Pursuant to Labor Code section 512, Plaintiff is entitled to compensation of one
12 additional hour of pay at his regular rate of compensation for each workday that the meal period was not
13 provided. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional
14 hour of pay at his regular rate of compensation for each workday that the meal period was not provided,
15 and one additional hour of pay for each workday that the rest period was not provided pursuant to
16 *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

17 **SIXTH CAUSE OF ACTION**

18 **VIOLATION OF UNFAIR COMPETITION LAW**

19 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

20 60. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though
21 set forth herein in full again.

22 61. Defendant's conduct, as alleged in this Complaint, has been and continues to be unfair,
23 unlawful, and harmful to Plaintiff and Defendant's competitors. Defendant's activities as alleged herein
24 are violations of California law, the FLSA and the Walsh-Healey Public Contracts Act, and constitute
25 unlawful business acts and practices in violation of California's Unfair Competition Law ("UCL")
26 Business and Professions Code Section 17200 *et seq.*

27 62. A violation of Business and Professions Code Section 17200 *et seq.* may be predicated on
28 the violation of any state or federal law including violations of the Labor Code. *Cortez v. Purolator Air*

1 *Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000). Business and Professions Code Section 17200 *et*
2 *seq.* defines unfair competition to include any unlawful, unfair, or fraudulent business act or practice.

3 63. “Any work in excess of eight hours in one workday and any work in excess of 40 hours
4 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
5 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
6 employee.” Lab. Code § 510(a).

7 64. During Plaintiff’s employment, he regularly worked more than eight hours per workday
8 and more than 40 hours per workweek, as alleged above, and was not compensated for those overtime
9 hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code
10 section 510, the FLSA.

11 65. As a result of the herein described violations of law, Defendant unlawfully gained an
12 unfair advantage over other businesses. As a result of the herein described violations of law, Defendant
13 has unjustly enriched itself at the expense of Plaintiff, the general public and other defense contractors.
14 Such conduct by Defendant constitutes unfair competition and unfair business practices, as such terms
15 are described in Business and Professions Code section 17200, *et seq.*

16 66. Plaintiff is informed, believes, and thereon allege that Defendant has continued and still
17 threaten to, unless restrained and ordered to disgorge all profits derived from said unfair business
18 practices as restitution to Plaintiff, violate the Unfair Competition Law by engaging in business practices
19 violative of California law, FLSA labor law and the Walsh-Healey Public Contracts Act as detailed
20 hereinabove.

21 67. Plaintiff and others have been personally injured and continue to be injured by
22 Defendant’s unlawful business acts and practices as alleged herein, including, but not limited to, the loss
23 of money and/or property at a sum according to proof at trial.

24 68. Pursuant to Business and Professions Code § 17203, the court is authorized to make such
25 orders or judgments as may be necessary to prevent the use or employment by any such person or entity
26 of any such practice which constitutes unfair competition or as may be necessary to restore to any
27 person in interest any money or property which may have been acquired by means of such unfair
28 competition.

69. Pursuant to Business and Professions Code Section 17200 et seq., Plaintiff is entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendant, for the period commencing from four years preceding the filing of the Complaint.

70. “Unless otherwise expressly provided, the remedies or penalties provided by [Business and Professions Code Section 17200 et seq.] are cumulative to each other and to the remedies or penalties available under all other laws of [California].

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS (AGAINST ALL DEFENDANTS AND DOES 1-5)

71. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

72. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing . . . (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number . . .” Lab. Code § 226(a).

73. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the IWC, 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.” Lab. Code § 558.1(a).

74. Defendant never issued a wage statement to Plaintiff for pay period 6/1/2020-6/15/2020.

75. “An employee suffering injury as a result of a 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 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

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1 76. An employee is deemed to suffer injury for purposes of section 226(e) if the employer
2 fails to provide an itemized wage statement showing the last four digits of his social security number or
3 an employee identification number other than a social security number, and the employee cannot
4 promptly and easily determine from the wage statement alone the last four digits of his social security
5 number or an employee identification number other than a social security number. Lab. Code §
6 226(e)(2)(B)(iv).

7 77. An employee is deemed to suffer injury for purposes of this subdivision if the employer
8 fails to provide a wage statement. Lab. Code § 226(e)(2)(B)(iv).

9 78. As a result of the knowing and intentional failure to provide compliant wage statements,
10 Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendant is liable to Plaintiff for
11 the amounts provided by California Labor Code § 226(e).

12 79. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of
13 reasonable attorneys' fees and costs.

14 **EIGHTH CAUSE OF ACTION**

15 **LABOR CODE § 203 WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

17 80. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set
18 forth herein in full again.

19 81. “If an employer willfully fails to pay, without abatement or reduction, in accordance
20 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or
21 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
22 rate until paid or until an action therefor is commenced.” Lab. Code § 203(a).

23 82. Defendant failed to timely pay Plaintiff her overtime wages within 72 hours of his last
24 date of work, in violation of Labor Code § 202, and failed to pay her the additional continuing wages as
25 a penalty from the original due date, in violation of Labor Code § 203.

26 83. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting
27 time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees,
28 and costs.

NINTH CAUSE OF ACTION

**HARASSMENT AND HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE FEHA
(AGAINST CHHS AND DOES 1-5)**

84. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

85. It is unlawful for a covered employer, because of race, national origin, and ancestry to harass an employee. Gov. Code § 12940(j)(1).

86. The FEHA makes the employer strictly liable for harassment by a supervisory employee. *Myers v. Trendwest Resorts, Inc.*, 148 Cal. App. 4th 1403, 1420 (2007). Harassment of an employee by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. Gov. Code § 12940(j)(1). The prohibition on harassment is so strong, that an employer may even be responsible for the acts of nonemployees where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. Gov. Code § 12940(j)(1). Loss of tangible job benefits shall not be necessary in order to establish harassment. Gov. Code § 12940(j)(1). Harassment includes but is not limited to: verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act; and physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual on a basis enumerated in the FEHA. 2 Cal. Code Regs. § 11019(b)(2)(A)(B).

87. An employee “is personally liable for any harassment prohibited by [Gov. Code § 12940(j)] that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.” Gov. Code § 12940(j)(3).

88. Plaintiff was subjected to unwanted harassing conduct during his employment because of his race and national origin.

89. Plaintiff experienced a hostile work environment by witnessing unwanted harassing conduct toward other Latino/Hispanic workers and/or workers of Mexican National Origin.

1 90. The harassing conduct was so severe, widespread, or persistent that a reasonable person
2 of Plaintiff's race/national origin in their circumstances would have considered the work environment to
3 be hostile or abusive.

4 91. Plaintiff considered the work environment to be hostile or abusive.

5 92. Defendant's supervisors or agents knew or should have known of the conduct and failed
6 to take immediate and appropriate corrective action.

7 93. Plaintiff was harmed as a direct, proximate, and foreseeable result of Defendant's conduct.
8 Plaintiff suffered general damages and emotional distress in the form of embarrassment, humiliation, loss
9 of enjoyment, and other incidental and consequential damages and expenses in an amount according to
10 proof at trial, and more than this Court's minimal jurisdiction.

11 94. The harassing conduct was a substantial factor in causing Plaintiff's harm.

12 95. Defendant, by and through their respective corporate officers, directors, and managing
13 agents, ordered, authorized, approved, and/or ratified the conduct herein alleged in violation of the FEHA.

14 96. In doing, ordering, authorizing, approving, and ratifying the acts, policies, and practices
15 alleged herein, Defendant, by and through their officers, directors and managing agents acted in conscious
16 and intentional disregard for the rights, health, and welfare of Plaintiff.

17 97. Defendant acted with oppression, as such term is defined in Civil Code section 3294(c)(2),
18 in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious
19 disregard of his FEHA rights to work in a hostile free environment.

20 98. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in
21 that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's
22 FEHA rights to work in a hostile free environment.

23 99. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through their
24 owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and
25 malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover actual
26 damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact
27 sufficient to punish, deter, and make an example of said Defendant.

28 ///

100. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs including expert witness fees. Gov. Code § 12965.

TENTH CAUSE OF ACTION

**FAILURE TO PREVENT HARASSMENT IN VIOLATION OF THE FEHA
(AGAINST CHHS AND DOES 1-5)**

101. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

102. "An entity shall take all reasonable steps to prevent harassment from occurring." Cal. Gov. Code § 12940(j)(1).

103. Plaintiff was subjected to harassment in the course of employment.

104. Defendant failed to take all reasonable steps to prevent the harassment.

105. Plaintiff was harmed as a direct, proximate, and foreseeable result of Defendant's conduct. Plaintiff suffered general damages and emotional distress in the form of embarrassment, humiliation, loss of enjoyment, and other incidental and consequential damages and expenses in an amount according to proof at trial, and more than this Court's minimal jurisdiction.

106. The harassing conduct was a substantial factor in causing Plaintiff's harm.

107. Defendant, by and through their respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or ratified the conduct herein alleged in violation of the FEHA.

108. In doing, ordering, authorizing, approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through their officers, directors and managing agents acted in conscious and intentional disregard for the rights, health, and welfare of Plaintiff.

109. Defendant acted with oppression, as such term is defined in Civil Code section 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of his FEHA rights to work in a hostile free environment.

110. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's FEHA rights to work in a hostile free environment.

111. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through their owners, officers, directors and managing agents’ promulgation and enforcement of the oppressive and malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact sufficient to punish, deter, and make an example of said Defendant.

112. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys’ fees and costs including expert witness fees. Gov. Code § 12965.

ELEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST CHHS AND DOES 1-5)

113. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

114. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

115. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

116. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.” The relevant period of the below allegations is from June 14, 2020, to present and ongoing.

Violations of Labor Code §§ 2802, 226.7, 512, 510, 1182.12, 1197, 1194, 204, 1198, 226(a), 1174(d), 558, 210, 226.3, 1174.5, 1197.1

Labor Code § 2802

117. “An 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.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

118. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that he was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

///

119. Defendant did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

120. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

Labor Code § 226.7

121. “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.” Lab. Code § 226.7(b).

122. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 15-2001 section 12, provide that “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 net rest time per four (4) hours or major fraction thereof.”

123. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks. Defendant did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with rest breaks. As such, Defendant violated Labor Code section 226.7.

124. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-2001 section 11, provide that “(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. (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

1 meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the
2 agreement at any time.”

3 125. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees
4 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks.
5 Defendant did not compensate Plaintiff and the other aggrieved employees in lieu of providing them
6 with meal breaks relieved of all duties. Defendant did not compensate Plaintiff and the other aggrieved
7 employees for the on-duty meal periods. As such, Defendant violated California Labor Code section
8 226.7.

9 126. California Labor Code section 226.7 does not provide for its own self-contained “civil
10 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
11 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
12 aggrieved employee per pay period for each subsequent violation.

13 ***Labor Code § 512***

14 127. “An employer may not employ an employee for a work period of more than five hours
15 per day without providing the employee with a meal period of not less than 30 minutes, except that if the
16 total work period per day of the employee is no more than six hours, the meal period may be waived by
17 mutual consent of both the employer and employee. An employer may not employ an employee for a
18 work period of more than 10 hours per day without providing the employee with a second meal period
19 of not less than 30 minutes.” Lab. Code § 512(a).

20 128. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees
21 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on
22 the days they worked more than five hours.

23 129. California Labor Code section 512 does not provide for its own self-contained “civil
24 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
25 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
26 aggrieved employee per pay period for each subsequent violation.

27 ***Labor Code § 510***
28

1 130. “Any work in excess of eight hours in one workday and any work in excess of 40 hours
2 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
3 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
4 employee.” Lab. Code § 510(a).

5 131. Plaintiff and his co-workers regularly worked more than eight hours per workday and
6 more than 40 hours per workweek. They were not compensated for those overtime hours worked more
7 than eight per day and 40 per week. As such, Defendant violated Labor Code § 510.

8 132. California Labor Code section 510 does not provide for its own self-contained “civil
9 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
10 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
11 aggrieved employee per pay period for each subsequent violation.

12 ***Labor Code § 1182.12***

13 133. On and after July 1, 2016, the minimum wage for all industries shall be not less than ten
14 dollars per hour. Lab. Code § 1182.12(a).

15 134. On numerous occasions Defendant required Plaintiff to perform work outside his normal
16 work hours but did not pay Plaintiff any wages for such time. Defendant also called on his days off to
17 perform work but did not pay Plaintiff wages for such time. Plaintiff believed Defendant did this to its
18 other employees. This resulted in Plaintiff and the aggrieved employees working without minimum
19 wage compensation. Therefore, Defendant violated Labor Code § 1182.12. California Labor Code
20 section 1182.12 does not provide for its own self-contained “civil penalty” within the statute. Thus,
21 California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved
22 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
23 for each subsequent violation.

24 ***Labor Code § 1197***

25 135. “The minimum wage for employees fixed by the commission is the minimum wage to be
26 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Lab. Code
27 § 1197. Labor Code section 1173 defines commission as Industrial Welfare Commission.
28

136. Sections 4(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 15-2001, 16-2001 provide that, “Every employer shall pay to each employee wages not less than the following: (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following: . . . (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018; (2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following: . . . and (b) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.”

137. On numerous occasions Defendant required Plaintiff to perform work outside his normal work hours but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. Plaintiff believes Defendant did this to other employees. This resulted in Plaintiff and the aggrieved employees working without being paid a minimum wage. Therefore, Defendant violated IWC Wage Orders and consequently violated Labor Code § 1197. California Labor Code section 1197 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide 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.

Labor Code § 1194

138. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

139. On numerous occasions Defendant required Plaintiff to perform work outside his normal work hours but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. Plaintiff believes Defendant did this to other employees. Plaintiff believes Defendant did this to other employees. This resulted in Plaintiff and the aggrieved employees working without being paid a minimum wage. Therefore, Defendant violated IWC Wage Orders and consequently violated Labor Code § 1194. California Labor Code section 1194 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor

Code section 2699(f)(2) applies to provide 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.

Labor Code § 204

140. Labor Code Section 204(b)(1) provides that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

141. Plaintiff and aggrieved employees worked more than 8 hours per day and forty per week. They were not compensated for those overtime hours worked more than eight per day and 40 per week. As a result, they worked in excess of 40 hours per week but were not paid overtime compensation for the hours over 40 per workweek worked. As such, Defendant violated Labor Code Section 204(b)(1) by failing to pay him for all the overtime wages that they earned which were in excess of the normal work period, by the next payday which followed the overtime work. Labor Code Section 204 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide 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.

Labor Code § 1198

142. California Labor Code section 1198 provides that the 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. California Labor Code section 1173 defines commission as the IWC. Further, 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.” Lab. Code § 1198.

143. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period.

1 144. As set forth above, on numerous occasions, Plaintiff and his co-workers, aggrieved
2 employees, worked more than eight hours per workday and more than 40 hours per workweek and were
3 not compensated for those overtime hours worked more than eight per day and 40 per week.

4 145. Sections 4(B) of relevant IWC orders, such as No. 15-2001, provide that “Every
5 employer shall pay to each employee, on the established payday for the period involved, not less than
6 the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is
7 measured by time, piece, commission, or otherwise.”

8 146. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-
9 2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest
10 periods, which insofar as practicable shall be in the middle of each work period. The authorized rest
11 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
12 four (4) hours or major fraction thereof.”

13 147. As set forth above, on numerous occasions, Defendant did not permit Plaintiff and other
14 aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties
15 for rest breaks.

16 148. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-
17 2001 section 11, provide that “(A) No employer shall employ any person for a work period of more than
18 five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not
19 more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent
20 of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute
21 meal period, the meal period shall be considered an —on duty meal period and counted as time worked.
22 An —on duty meal period shall be permitted only when the nature of the work prevents an employee
23 from being relieved of all duty and when by written agreement between the parties an on-the-job paid
24 meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the
25 agreement at any time.”

26 ///

1 149. As set forth above, on numerous occasions, Defendant did not permit Plaintiff and other
2 aggrieved employees to have uninterrupted duty-free meal breaks with the opportunity to be relieved of
3 all duties for meal breaks.

4 150. Based on the foregoing, Defendant violated California Labor Code section 1198 by
5 violating the above-referenced sections of relevant Wage Orders of the IWC.

6 151. California Labor Code section 1198 does not provide for its own self-contained “civil
7 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
8 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
9 aggrieved employee per pay period for each subsequent violation.

10 ***Labor Code § 226(a)***

11 152. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
12 or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s
13 wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in
14 writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in
15 subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is
16 paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
17 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
18 period for which the employee is paid, (7) the name of the employee and only the last four digits of his
19 or her social security number or an employee identification number other than a social security number,
20 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee.” Lab. Code § 226(a).

23 153. Due to Defendant’s failure to provide meal and rest breaks relieved of all duty, and
24 failure to account for the time worked while receiving and responding to phone calls and text messages
25 while off the clock, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1)
26 the accurate total hours worked by Plaintiff; (2) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by Plaintiff; (3) the accurate
28 gross wages earned by Plaintiff; and (4) the accurate net wages earned by Plaintiff. As such, Defendant

1 violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement
2 records of the foregoing.

3 154. Labor Code Section 226 does not provide for its own self-contained "civil" penalty
4 within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for
5 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
6 per pay period for each subsequent violation.

7 ***Labor Code § 1174(d)***

8 155. Labor Code Section 1174(d) provides that every person employing labor in this state
9 shall keep payroll records showing the hours worked daily by and the wages paid to employees
10 employed for not less than three years. "Person" means any person, association, organization,
11 partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

12 156. Defendant failed to maintain records showing the actual and accurate hours worked by
13 Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code
14 Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor
15 Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay
16 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
17 violation.

18 ***Labor Code § 558***

19 157. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of
20 an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to
22 a civil penalty in a PAGA action as follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
24 for which the employee was underpaid . . .

25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
26 each pay period for which the employee was underpaid . . .
27
28

1 158. As discussed above, Defendant violated Labor Code sections 510, 512, and the above-
2 referenced provisions of IWC Wage Orders as applicable. As such, Defendant is subject to pay the pre-
3 determined amount of civil penalties for the initial and subsequent violations.

4 ***Labor Code § 210***

5 159. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from,
6 any other penalty provided in this article, every person who fails to pay the wages of each employee as
7 provided in Section 204 shall be subject to a civil penalty as follows:

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

9 (2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each
10 employee, plus 25 percent of the amount unlawfully withheld.

11 160. As discussed above, Defendant violated Labor Code § 204. As such, Defendant is
12 subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations “plus
13 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

14 ***Labor Code § 226.3***

15 161. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil
16 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation
17 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
18 the employer fails to provide the employee a wage deduction statement or fails to keep the records
19 required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for
20 all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675
21 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil
22 penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

23 ***Labor Code § 1174.5***

24 162. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails
25 to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject
26 to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code
27 Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours
28 worked daily by Plaintiff and the aggrieved employees. Thus, Defendant is subject to civil penalties.

Labor Code § 1197.1

163. Pursuant to Labor Code section 1197.1(a), 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 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 Section 1194.2, and any applicable penalties imposed pursuant to Section 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 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

164. As discussed above, Defendant caused employees to be paid a wage less than the minimum fixed by an applicable state or local law, or by an order of the IWC. As such, Defendants are subject to civil penalties.

Exhaustion of Administrative Remedies

165. On June 14, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-834854-21. The notice was sent by certified mail on or about June 14, 2021, to Wendy Tohidi, CEO of CHHS (7019 0140 0000 7526 8927). Plaintiff submitted a \$75.00 fee to the LWDA.

166. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil

1 action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to
2 the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor
3 Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to
4 Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to
5 Labor Code section 2699.

6 **PRAYER**

7 WHEREFORE, Plaintiff prays:

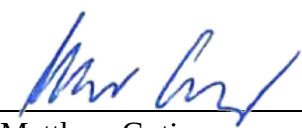
- 8 1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
- 9 2. For compensatory special damages, in an amount according to proof at the time of trial.
- 10 3. For compensatory general damages, in an amount according to proof at the time of trial.
- 11 4. For reimbursement and indemnification for all work-related expenditures, in an amount
12 according to proof at the time of trial.
- 13 5. For restitution, in an amount according to proof at the time of trial.
- 14 6. For statutory penalties pursuant to the California Labor Code.
- 15 7. For liquidated damages pursuant to the California Labor Code.
- 16 8. For exemplary and punitive damages in an amount deemed sufficient by trier or fact to
17 punish, deter, and make an example of Defendant in an amount according to proof at the time of trial.
- 18 9. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil
19 Procedure.
- 20 10. For costs of suit including expert witness fees.
- 21 11. For prejudgment interest.
- 22 12. For such other and further relief as the Court may deem proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff JUAN RAMIREZ hereby demands a trial by jury.
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1 Dated: August 18, 2021

GUTIERREZ DERHAM LAW FIRM LLP

2
3 By: 

4 Matthew Gutierrez

5 Attorneys for Plaintiff, JUAN RAMIREZ,
6 individually and as a proxy for the State of
7 California
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