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Assigned for all Purposes
Judge William Claster
CX-104

Attorneys for Plaintiff
MARIAN LOPEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

MARIAN LOPEZ, an individual,

Plaintiff,

v.

SAN BERNARDINO CONVALESCENT
OPERATIONS, INC., a California corporation;
and DOES 1 through 20, inclusive,

Defendants.

Case No. 30-2021-01216694-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PAY WAGES (CAL. LAB. CODE §§201, 1182.12, 1194, 1194.2, 1197, 558);**
- 2. FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 3. FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7, 558);**
- 4. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 5. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 6. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ); AND**
- 7. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 COMES NOW PLAINTIFF, MARIAN LOPEZ, and for causes of action against the
2 Defendants and each of them, alleges as follows:

3
4 **JURISDICTION**

5 1. This Court is the proper court, and this action is properly filed in Orange County, because
6 Defendants' obligations and liability arise therein, because Defendants maintain offices and transact
7 business within Orange County, and because the work that is the subject of this action was performed by
8 Plaintiff in Orange County.

9
10 **THE PARTIES**

11 2. Plaintiff, MARIAN LOPEZ, is and at all times relevant hereto was a resident of the County
12 of Orange, State of California.

13 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
14 hereto, Defendant SAN BERNARDINO CONVALESCENT OPERATIONS, INC. (hereinafter referred
15 to as "DEFENDANT") was and is a limited liability company doing business in the County of Orange,
16 State of California.

17 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Employer owned and operated a convalescent home located at 18543 Yorba Linda Blvd., #347,
19 Yorba Linda, CA 92886.

20 5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
21 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
22 Commission Order No. 5-2001 and are each an "employer or other person acting on behalf of an
23 employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
24 basis.

25 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
26 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
27 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
28 insert the true names and capacities of said Defendants when the same become known to Plaintiff.

1 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
2 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
3 hereinafter.

4 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
5 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
6 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
7 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
8 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
9 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

10 8. Whenever and wherever reference is made in this complaint to any act or failure to act by
11 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
12 and/or failures to act by each Defendant acting individually, jointly and severally.

13
14 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

15 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
16 of interest and ownership between Employer and DOES 1-20 that the individuality and separateness of
17 defendants have ceased to exist.

18 10. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
19 purported corporate existence, Employer and DOES 1-20 are, in reality, one and the same, including, but
20 not limited to because:

21 a. Employer is completely dominated and controlled by one another and DOES 1-20,
22 who personally committed the frauds and violated the laws as set forth in this complaint, and who have
23 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
24 some other wrongful or inequitable purpose.

25 b. Employer and DOES 1-20 derive actual and significant monetary benefits by and
26 through one another's unlawful conduct, and by using one another as the funding source for their own
27 personal expenditures.

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1 c. Employer and DOES 1-20, while really one and the same, were segregated to
2 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose.

4 d. Employer do not comply with all requisite corporate formalities to maintain a legal
5 and separate corporate existence.

6 e. The business affairs of Employer and DOES 1-20 are, and at all times relevant
7 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
8 inextricable confusion. Employer is, and at all times relevant hereto were, used by one another and DOES
9 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the
10 alter ego of one another and DOES 1-20. The recognition of the separate existence of Defendants would
11 not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff
12 for violations of the Government Code and other statutory violations. The corporate existence of
13 Employers and DOES 1-20 should be disregarded in equity and for the ends of justice because such
14 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

15 11. Accordingly, Employer constitute the alter ego of one another and DOES 1-20, and the
16 fiction of their separate corporate existence must be disregarded.

17 12. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
18 thereon alleges that Employer and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
19 enterprise, and that Plaintiff was an employee of Employer and DOES 1-20. Plaintiff performed services
20 for each and every one of Defendant, and to the mutual benefit of all Defendant, and all Defendant shared
21 control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendant's
22 business was and is conducted.

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13. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employer, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employer and/or DOES 1-20 agreed to be liable for the debts of the other Defendant, (2) the transaction between Employer sand/or DOES 1-20 and the other Defendant amounts to a consolidation or merger of the two corporations, (3) Employer and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employer and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendant's debts. Accordingly, Employer and/or DOES 1-20 are the successors of one or more of the other Defendant and are liable on that basis.

FACTUAL ALLEGATIONS

14. On or about August 13, 2013, Plaintiff began working for Defendant as a housekeeper. Plaintiff was a non-exempt, full-time employee, who performed all of her duties satisfactorily, until on or about October 14, 2020.

15. Plaintiff was covered under one or more IWC Wage Orders and/or the California Labor Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and statutes, which imposed an obligation on the part of Defendant, among other things, to provide uninterrupted rest periods, to pay wages for all hours worked, and to provide accurate wage statements.

16. Between January 1, 2016 through December 31, 2017, Plaintiff's hourly wage rate was approximately \$8.50. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday through Saturday, for approximately 8 hours per day.

17. Between January 1, 2018 through December 31, 2019, Plaintiff's hourly wage rate was approximately \$12.48. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday through Saturday, for approximately 8 hours per day.

18. Between January 1, 2020 through October 2020, Plaintiff's hourly wage rate was approximately \$13.58. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday through Saturday, for approximately 8 hours per day.

19. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of the right to take statutory 10-minute rest breaks for every four hours worked or substantial portion thereof.

1 20. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
2 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
3 worked.

4 21. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
5 paystubs that did not comply with Labor Code § 226, because they failed to show pay for missed rest
6 periods, as well as failed to show the amount of wages earned and owed to Plaintiff.

7 22. As a direct result and proximate result of the unlawful actions of Defendants, Plaintiff has
8 suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to
9 proof at trial, and within the jurisdiction of this Court.

10
11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 23. At all relevant times, PAGA was applicable to Plaintiff and his employment with
13 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
14 Development Agency ("LWDA").

15 24. Plaintiff and other employees of Defendants are "aggrieved employees" as defined by
16 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
17 violations were committed against them.

18 25. On or about May 26, 2021, Plaintiff gave written notice of Defendants' violations of
19 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
20 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

21 26. The LWDA did not provide notice of its intention to investigate Defendants' violations
22 within 65 calendar days of the May 26, 2021 notice.

23 27. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to
24 recover civil penalties against Defendants, in addition to the other remedies, for violations of California
25 Labor Code §§ 226 (inaccurate itemized wage statements), 226.7 (rest break violations), 512 (meal
26 breaks), 203 (wages due upon separation) as well as IWC Wage Order No. 5-2001.

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1 **FIRST CAUSE OF ACTION**

2 **FOR FAILURE TO PAY WAGES DUE**

3 **LABOR CODE §§201, 1182.12, 1194, 1194.2, 1197, 558**

4 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 28. Plaintiff re-alleges and incorporates by reference the above as though set forth in full
6 herein.

7 29. At all relevant times, Defendants failed and refused to pay Plaintiff's earned and due
8 wages required by 8 Code of Regulations §11050, as set forth hereinabove.

9 30. As alleged herein, Defendants routinely failed to pay Plaintiff for one hour of pay at
10 Plaintiff's regular hourly rate of pay for Plaintiff's entitled rest break periods.

11 31. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510,
12 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

13 32. Plaintiff has been deprived of his rightfully earned compensation as a direct and
14 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
15 recover such amounts, plus interest thereon, attorney fees, and costs.

16
17 **SECOND CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE MEAL BREAKS**

19 **(CAL. LABOR CODE §§226.7, 512)**

20 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 33. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
22 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

23 34. Labor Code § 512 requires employers to provide every employee with an uninterrupted
24 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

25 35. Between January 1, 2016 through December 31, 2017, Plaintiff's hourly wage rate was
26 approximately \$8.50. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday
27 through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour of pay at
28 \$8.50 for 522 work days, or \$4,437.00, plus interest thereon, for unpaid meal periods.

1 36. Between January 1, 2018 through December 31, 2019, Plaintiff's hourly wage rate was
2 approximately \$12.48. During this time period, Plaintiff's fixed schedule was five days per week,
3 Tuesday through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour
4 of pay at \$12.48 for 261 work day, or \$3,257.28, plus interest thereon, for unpaid meal periods.

5 37. Between January 1, 2020 through October 2020, Plaintiff's hourly wage rate was
6 approximately \$13.58. During this time period, Plaintiff's fixed schedule was five days per week,
7 Tuesday through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour
8 of pay at \$10.75 for 205 work day, or \$2,783.90, plus interest thereon, for unpaid meal periods.

9 38. Plaintiff was required to work through or cut short her meal breaks due to Defendants'
10 failure to maintain adequate staffing levels. Defendants required Plaintiff to perform her job duties as an
11 associate non-stop and was not allowed to enjoy a timely, uninterrupted meal breaks. Defendants failed
12 to properly staff enough employees to help make sure all employees could be relieved to take a meal
13 break without pressure to forego or delay their meal breaks.

14 39. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
15 such amounts in the combined amount of \$10,478.18, pursuant to Labor Code §226.7(b), plus interest
16 thereon and costs of suit.

17 40. Pursuant to California Labor Code § 226.7, Plaintiff has sustained economic damages,
18 including, but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and
19 are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not
20 provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and
21 pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees
22 and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor
23 Code and IWC Wage Order No. 5-2001.

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THIRD CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS
(CAL. LABOR CODE §§226.7, 512)
BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

41. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though set forth in full herein.

42. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion thereof.

43. Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each day of work.

44. Defendants failed and refused to provide Plaintiff with rest periods, and failed to compensate Plaintiff for missed rest periods, as required by Labor Code §§226.7 and the applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 5-2001.

45. As alleged herein, Plaintiff is not exempt from the rest period requirements of the applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 5-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

46. Between January 1, 2016 through December 31, 2017, Plaintiff's hourly wage rate was approximately \$8.50. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour of pay at \$8.50 for 522 work days, or \$4,437.00, plus interest thereon, for unpaid meal periods.

47. Between January 1, 2018 through December 31, 2019, Plaintiff's hourly wage rate was approximately \$12.48. During this time period, Plaintiff's fixed schedule was five days per week, Tuesday through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour of pay at \$12.48 for 261 work day, or \$3,257.28, plus interest thereon, for unpaid meal periods.

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1 48. Between January 1, 2020 through October 2020, Plaintiff's hourly wage rate was
2 approximately \$13.58. During this time period, Plaintiff's fixed schedule was five days per week,
3 Tuesday through Saturday, for approximately 8 hours per day. Consequently, Plaintiff is owed one hour
4 of pay at \$10.75 for 205 work day, or \$2,783.90, plus interest thereon, for unpaid meal periods.

5 49. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest periods
6 as a direct and proximate result of Defendant's failure and refusal to pay said compensation.

7 50. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
8 such amounts in the combined amount of \$10,478.18, pursuant to Labor Code §226.7(b), plus interest
9 thereon and costs of suit.

10
11 **FOURTH CAUSE OF ACTION**
12 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
13 **(CAL. LABOR CODE §§226, ET SEQ.)**
14 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 51. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
16 set forth in full herein.

17 52. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
18 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
19 total deductions, and net wages earned. An employer who violates these code sections is liable to its
20 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
21 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
22 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
23 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
24 at all.

25 53. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates
26 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
27 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

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1 54. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
2 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
3 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
4 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
5 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
6 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
7 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
8 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
9 of the required information, including hours actually worked.

10 55. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

11 56. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
12 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
13 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
14 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
15 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
16 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
17 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
18 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

19 57. Plaintiff was paid on a bi-monthly basis, and therefore Defendants violated Labor Code
20 §226 approximately 96 times during the last year that Plaintiff worked for Defendants.

21 58. Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties
22 in the statutory maximum amount of \$4,000.00, whichever is greater.

23 59. In addition, thereto, for Defendant's 96 violations, Defendants are penalized \$250.00 for
24 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
25 in Labor Code §226.3 penalties of \$91,250.00 (\$250.00 + \$1,000.00 x 91 subsequent pay periods).

26 60. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
27 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
28 applicable provisions, as well as attorneys' fees and costs.

1 **FIFTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES LABOR CODE §§201-203**

3 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

4 61. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
5 set forth in full herein.

6 62. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
7 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
8 total deductions, and net wages earned. An employer who violates these code sections is liable to its
9 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
10 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
11 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
12 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
13 at all.

14 63. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates
15 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
16 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

17 64. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
18 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
19 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
20 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
21 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
22 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
23 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
24 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
25 of the required information, including hours actually worked.

26 65. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

27 66. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
28 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in

1 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
2 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
3 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
4 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
5 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
6 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

7 67. Defendants knowingly and intentionally failed to furnish Plaintiff with timely, itemized
8 statements as required by California Labor Code § 226(a) and IWC Wage Order 16, § 7(B). As a result,
9 Plaintiff has been damaged in an amount according to proof at trial, and seek all wages earned and due,
10 plus interest thereon. Additionally, Plaintiff is entitled to all available statutory penalties, including but
11 not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
12 award of costs, expenses, and reasonable attorneys' fees, as well as other available remedies. Pursuant
13 to California Labor Code § 1194.5, Plaintiff is also entitled to preliminary and permanent injunctive relief
14 against further violations of these laws and wage orders.

15
16 **SIXTH CAUSE OF ACTION**
17 **FOR PRIVATE ATTORNEY GENERAL ACT**
18 **(CAL. LABOR CODE §2699, ET SEQ)**
19 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

20 68. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
21 set forth in full herein.

22 69. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
23 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
24 for Defendants' violations of the California Labor Code.

25 70. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
26 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
27 previously pleaded in this Complaint.

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1 71. On May 26, 2021, more than 65 calendar days before filing this Complaint, Plaintiff
2 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
3 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
4 satisfying the requirements of Labor Code §2699.3(a). These violations included the above-stated Labor
5 Code sections, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

6 72. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
7 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
8 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

9 73. As a direct and proximate result of Defendants' California Labor Code violations as set
10 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
11 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
12 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
13 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
14 provide for a penalty, §§226.3, 226.7, and 512.

15 74. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

16 75. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
17 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

18
19 **SEVENTH CAUSE OF ACTION**
20 **FOR UNFAIR COMPETITION**
21 **(BUS. & PROF. CODE §17200 ET SEQ.)**
22 **AGAINST ALL DEFENDANTS**

23 76. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
24 set forth in full herein.

25 77. Defendants' violations of the applicable 8 Code of Regulations section, Industrial Welfare
26 Commission Order No.16-2001, the above-stated Labor Code sections, 2699, and other applicable
27 provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime
28 wages, Defendants' failure to provide meal and rest breaks, and Defendants' failure to provide timely and

1 accurate wage and hour statements, constitute unfair business practices in violation of Business &
2 Professions Code §§17200, et seq.

3 78. As a result of Defendants' unfair business practices, Defendants have reaped unfair
4 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
5 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

6 79. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
7 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
8 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
9 Plaintiff.

10
11 **PRAYER FOR RELIEF**

12 80. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
13 in the amount of no less than \$20,956.36;

14 81. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

15 82. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
16 less than \$91,250.00;

17 83. For statutory penalties pursuant to Labor Code §2699(f), on Plaintiff's own behalf, and
18 similar amounts on behalf of all of Defendants' aggrieved employees;

19 84. For preliminary and permanent injunctive relief enjoining Defendants from violating the
20 relevant provisions of the California Labor Code and IWC Wage Order No. 5-2001 and from engaging
21 in the unlawful business practices complained of herein;

22 85. For prejudgment interest on each of the foregoing at the legal rate from the date the
23 obligation became due through the date of judgment in this matter.

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1 86. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
2 Code and/or any other basis;

3 87. For post-judgment interest;

4 88. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class
5 counsel; and

6 89. For any other relief that is just and proper.
7

8 DATED: August 16, 2021
9

10 By:



Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff, MARIAN LOPEZ

11
12
13 **JURY TRIAL DEMANDED**

14 Plaintiff demands trial of all issues by jury.
15

16 DATED: August 16, 2021
17

18
19 By:



Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff, MARIAN LOPEZ