

BROCK & GONZALES, LLP

6701 CENTER DRIVE WEST, STE. 610

LOS ANGELES, CALIFORNIA 90045

Tel: (310) 294-9595

Fax: (310) 961-3673

D. AARON BROCK, STATE BAR NO. 241919

DANIELLE L. GRUPPCHANG, STATE BAR NO. 313881

Attorneys for Plaintiff

Richard Tuoza

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Richard Tuoza, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

vs.

Real Community Services, Inc, a California
corporation; Real Place Inc, a California
corporation; AMN Home Corporation, a
California corporation; Real Community
Services, LLC, a California limited liability
company; Nemia Home, Inc., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV23851

Honorable Kenneth R. Freeman

Department SSC14

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

- (1) FAILURE TO PAY PROPERLY
OVERTIME WAGES;**
- (2) FAILURE TO PAY MINIMUM
WAGES;**
- (3) FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS AND PREMIUMS IN
LIEU THEREOF;**
- (4) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND PREMIUMS IN
LIEU THEREOF;**
- (5) FAILURE TO TIMELY PAY WAGES
DURING EMPLOYMENT;**
- (6) FAILURE TO TIMELY PAY WAGES
UPON TERMINATION;**
- (7) FAILURE TO PROVIDE COMPLIANT
WAGE STATEMENTS;**
- (8) FAILURE TO MAINTAIN REQUISITE
PAYROLL RECORDS;**
- (9) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES;**

- 10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
§17200, ET SEQ.; and
11) VIOLATION OF CALIFORNIA
LABOR CODE § 2698, ET SEQ.
(CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT OF
2004)

DEMAND FOR JURY TRIAL

Plaintiff Richard Tuozo (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, hereby brings this complaint, demanding a trial by jury, against the above-named Defendants and states and alleges as follows:

THE PARTIES

1. At all times mentioned herein, Plaintiff RICHARD TUOZO was an individual and a resident of the State of California.

2. At all times mentioned herein, Defendant Real Community Services Inc was, upon information and belief, a California corporation, doing business in the State of California, County of Los Angeles, located at 5505 South Garth Avenue, Los Angeles, California 90056.

3. At all times mentioned herein, Defendant Real Place Inc was, upon information and belief, a California corporation, doing business in the State of California, County of Los Angeles, located at 8117 Handley Avenue, Los Angeles, California 90045.

4. At all times mentioned herein, Defendant AMN Home Corporation was, upon information and belief, a California corporation, doing business in the State of California

5. At all times mentioned herein, Defendant Real Community Services, LLC was, upon information and belief, a California limited liability company, doing business in the State of California.

6. At all times mentioned herein, Defendant Nemia Home, Inc. was, upon information and belief, a California corporation, doing business in the State of California

8. The true names and capacities, whether individual, corporate, associate or otherwise of DOES 1 through 50 are unknown to Plaintiff who therefore sues these defendants under fictitious names. Plaintiff is informed and believes that each of the Doe defendants are legally responsible in some manner for the events referred to in this Complaint, and are/were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein. Plaintiff will in the future seek leave of this court to show the true names and capacities of these Doe defendants when it has been ascertained.

9. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

JURISDICTION AND VENUE

10. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution Plaintiff seeks exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

11. Pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts, this Court has jurisdiction over this class action. The statutes under which this class action is brought do not specify any other basis for jurisdiction.

13. Venue is proper in this Court because, upon information and belief, Defendants maintain locations, have agents, employ individuals, and/or transact business in the State of California, including the County of Los Angeles. The acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Los Angeles. At all relevant times, Defendants maintained their headquarters within the State of California, County of Los Angeles.

14. At all times mentioned herein, Defendants employed Plaintiff and other class members as hourly-paid or non-exempt employees within the State of California, including the County of Los Angeles.

15. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee from approximately April 2018 to February 2021 in the State of California, County of Los Angeles.

16. Defendants paid wages and benefits to Plaintiff and the other class members, had the authority to hire and terminate them, set the rules and conditions governing their employment, and supervised their daily employment activities. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be their joint employers.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse of, *inter alia*, failing to pay against their hourly-paid or non-exempt employees within the State of California all regular and/or overtime wages earned and premiums owed due to missed meal periods and rest breaks in violation of California law.

1 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that Plaintiff and the other class members were required to work over eight
3 (8) hours in a day, forty (40) hours in a week, and/or six (6) days in a workweek and were entitled
4 to receive certain wages for overtime compensation.

5 19. During the relevant time period, Defendants failed to properly pay all overtime
6 wages to Plaintiff and the other class members for all overtime hours worked.

7 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
8 or should have known that Plaintiff and the other class members were entitled to receive at least
9 minimum wages as compensation for all hours worked and that they were not receiving at least
10 minimum wages for all hours they worked.

11 21. During the relevant time period, Defendants failed to pay Plaintiff and the other class
12 members at least minimum wages for all hours worked.

13 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
14 to provide Plaintiff and the other class members with compliant meal and rest periods during the
15 relevant time period as required under the Industrial Welfare Commission Wage Orders and thus
16 they are entitled to any and all applicable premium payments.

17 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
18 or should have known that Plaintiff and the other class members were entitled to receive
19 compliant meal and rest periods or a premium payment in the amount of one additional hour of
20 pay at Plaintiff's and the other class member's regular rate of pay when a meal or rest period was
21 missed, short, late, on-duty, or interrupted, and they did not receive all required meal and rest
22 periods or premium payments in lieu thereof.

23 24. During the relevant time period, Defendants failed to provide all compliant, timely,
24 and uninterrupted meal and rest periods or premiums in lieu thereof, to Plaintiff and the other
25 class members.

26 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
27 or should have known that Plaintiff and the other class members were entitled to receive all wages
28 owed to them upon discharge or resignation, including overtime and minimum wages and meal

1 and rest period premiums, and they did not, in fact, receive all such wages owed to them at the
2 time of their discharge or resignation.

3 26. During the relevant time period, Defendants failed to pay Plaintiff and the other class
4 members all wages within any time permissible under California law, including, *inter alia*,
5 California Labor Code section 204.

6 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
7 or should have known that Plaintiff and the other class members were entitled to timely receive
8 all wages owed to them during their employment. Plaintiff and the other class members did not
9 receive payment of all wages, including overtime and minimum wages and meal and rest period
10 premiums, within any time permissible under California Labor Code section 204.

11 28. During the relevant time period, Defendants failed to pay Plaintiff and the other class
12 members all wages owed to them upon discharge or resignation.

13 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
14 or should have known that Plaintiff and the other class members were entitled to receive complete
15 and accurate wage statements in accordance with California law, but, in fact, they did not receive
16 complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*,
17 the failure to include the total number of hours worked by Plaintiff and the other class members
18 and the name and address of the legal entity of the employer.

19 30. During the relevant time period, Defendants failed to provide compliant wage
20 statements to Plaintiff and the other class members.

21 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
22 or should have known that Defendants were required to keep complete and accurate payroll
23 records for Plaintiff and the other class members in accordance with California law, but failed to
24 maintain complete and accurate payroll records.

25 32. During the relevant time period, Defendants failed to keep complete and/or accurate
26 payroll records for Plaintiff and the other class members.

27 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
28 or should have known that Plaintiff and the other class members were entitled to reimbursement

1 for necessary business-related expenses in accordance with California law, but knowingly failed
2 to do so.

3 34. During the relevant time period, Defendants failed to reimburse Plaintiff and the other
4 class members for all necessary business-related expenses and costs.

5 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
6 or should have known that they had a duty to properly compensate Plaintiff and the other class
7 members pursuant to California law, and that Defendants had the financial ability to pay such
8 compensation, but for their own financial gain, willfully, knowingly, and intentionally failed to
9 do so, and falsely represented to Plaintiff and the other class members that they were not properly
10 denied wages.

11 36. During the relevant time period, Defendants failed to properly compensate Plaintiff
12 and the other class members pursuant to California law in order to increase Defendants' profits.

13 37. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
14 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
15 [or her] under this article."

16 **CLASS ACTION ALLEGATIONS**

17 38. Plaintiff brings this action on his own behalf and on behalf of all other members of
18 the general public similarly situated, and, thus, seeks class certification under California Code of
19 Civil Procedure section 382.

20 39. The proposed class is defined as follows:

21 All current and former hourly-paid and/or non-exempt employees who worked for
22 any of the Defendants within the State of California at any time during the period
23 from June 28, 2017 to final judgment, that live in California.

24 40. Plaintiff reserves the right to establish subclasses as appropriate.

25 41. This action is certifiable as a class action because the class is ascertainable, as
26 explained above, and there is a well-defined community of interest in the litigation.

27 a. Numerosity: The class members are so numerous that joinder of all class members
28 is impracticable. The exact membership of the class is unknown to Plaintiff at this

time; however, the class is estimated to be at least one hundred fifty (150) individuals and they are readily ascertainable through Defendants' employment records.

- b. Typicality: Plaintiff's claims are typical of the class's claims because they stem from Defendants' uniform policies, practices, and procedures which apply to all class members as explained herein. Plaintiff has a well-defined community of interest with the class and will fairly and adequately protect their interests.
- c. Adequacy: Plaintiff will fairly and adequately protect the class's interests because Plaintiff has no interests in opposition to the other class members. Plaintiff's attorneys are experienced in employment law and are educated in the rules governing class action litigation.
- d. Superiority: A class action is superior to other methods for the fair and efficient resolution of this litigation because due to the number of individuals in the class, the individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers in California regularly violate employment and labor laws without repercussion. Employees often fail to assert their rights out of fear of direct or indirect retaliation and due to feeling that individually, they lack power and strength. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights and allow individuals to join together to pursue their rights.

42. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to each class member:

- a. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or over six (6) days in

- 1 a week and failed to properly pay the legally required overtime compensation to
2 Plaintiff and the other class members in violation of California Labor Code;
- 3 b. Whether Defendants failed to pay minimum wages to Plaintiff and the other class
4 members for all hours worked in violation of California Labor Code;
- 5 c. Whether Defendants deprived Plaintiff and the other class members of compliant
6 meal and/or rest periods or required Plaintiff and the other class members to endure
7 non-compliant (i.e., short, late, interrupted, on-duty, and/or missed altogether)
8 meal and/or rest periods without compensation in violation of California Labor
9 Code;
- 10 d. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
11 class members during their employment in violation of California Labor Code;
- 12 e. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
13 class members upon their discharge or resignation in violation of California Labor
14 Code;
- 15 f. Whether Defendants provided compliant wage statements to class members as
16 required by the California Labor Code;
- 17 g. Whether Defendants kept complete and accurate payroll records as required by the
18 California Labor Code;
- 19 h. Whether Defendants failed to reimburse Plaintiff and the other class members for
20 necessary business-related expenses and costs as required by the California Labor
21 Code;
- 22 i. Whether Defendants' conduct was willful and/or reckless;
- 23 j. Whether Defendants engaged in unfair business practices in violation of California
24 Business & Professions Code section 17200, *et seq.*;
- 25 k. The appropriate amount of damages, restitution, and/or monetary penalties
26 resulting from Defendants' violation of California law; and
- 27 l. Whether Plaintiff and the other class members are entitled to compensatory
28 damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

43. At all relevant times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

44. At all relevant times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

45. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

46. Plaintiff was employed by Defendants and the alleged violations were committed against him during his employment with Defendants and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

48. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

49. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employer by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil

1 action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any
2 other penalties to which the employee may be entitled.

3 50. On June 8, 2021, Plaintiff provided written notice by online submission and certified
4 mail respectively to the LWDA and to Defendants of the specific provisions of the California
5 Labor Code alleged to have been violated, including the facts and theories to support the alleged
6 violations. Therefore, the administrative prerequisites under California Labor Code section
7 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California
8 Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194,
9 1194.2, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

12 **(Against ALL Defendants)**

13 51. Plaintiff restates and incorporates by this reference as if fully set forth herein
14 paragraphs 1 through 50 of this Complaint.

15 52. California Labor Code section 1198 and the applicable Industrial Welfare
16 Commission (“IWC”) Wage Order provide that depending on the number of hours worked by the
17 person on a daily or weekly basis, it is unlawful to employ persons without compensating them
18 at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay.

19 53. The applicable IWC Wage Order provides that Defendants are and were required to
20 pay Plaintiff and the other class members overtime compensation at a rate of one-and-one-half
21 times their regular rate of pay for all hours worked in excess of eight (8) hours in a day, more than
22 forty (40) hours in a workweek, and/or more than six (6) days in a workweek at the rate of one-
23 and-one-half.

24 54. The applicable IWC Wage Order further provides that Defendants are and were
25 required to pay Plaintiff and the other class members overtime compensation at a rate of two times
26 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and eight (8)
27 hours on the seventh (7th) consecutive day of work in a workweek.

56. During the relevant time period, Plaintiff and the other class members were required to work in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6) days in a workweek.

57. During the relevant time period, Defendants intentionally and willfully failed to properly pay overtime wages owed to Plaintiff and the other class members.

58. Defendants' failure to properly pay Plaintiff and the other class members all overtime earned, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

59. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, litigation costs, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against ALL Defendants)

60. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 59 of this Complaint.

61. At all times mentioned herein, California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and that the payment of a lesser wage than the minimum wage mentioned therein is unlawful.

62. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

63. Defendants' failure to pay Plaintiff and the other class members the minimum wage violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to California Labor Code, Plaintiff and the other class members are entitled to recover the amount of minimum wage compensation due to them as well as interest, litigation costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

64. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

65. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

AND PREMIUMS IN LIEU THEREOF

(Against ALL Defendants)

66. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 65 of this Complaint.

67. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

68. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

69. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for more than five (5) hours per day without providing the employee with an uninterrupted meal period of at least thirty (30) minutes. Notwithstanding the foregoing, if the total work period is

1 not longer than six (6) hours, then the meal period may be waived by mutual written consent of
2 both the employer and employee.

3 70. At all relevant times, the applicable IWC Wage Order and California Labor Code
4 section 512(a) further provide that an employer may not require, cause or permit an employee to
5 work for more than ten (10) hours per day without providing the employee with a second
6 uninterrupted meal period of at least thirty (30) minutes. Notwithstanding the foregoing, if the
7 total hours worked is not longer than twelve (12) hours, the second meal period may be waived
8 by mutual written consent of the employer and the employee, but only if the first meal period was
9 not waived.

10 71. At all relevant times, Plaintiff and the other class members who worked for a time
11 period six (6) hours or less, and who did not validly waive their legally-mandated meal periods,
12 were required to work for periods longer than five (5) hours without a compliant meal period of
13 at least thirty (30) minutes.

14 72. At all relevant times, Plaintiff and the other class members who worked for a period
15 of time longer than six (6) hours were required to work for periods longer than five (5) hours
16 without a compliant meal period of at least thirty (30) minutes.

17 73. During the relevant time period, Defendants intentionally and willfully required
18 Plaintiff and the other class members to work during meal periods and experience short, late, on-
19 duty, and/or interrupted meal periods and failed to compensate them with a meal period premium
20 pursuant to California Labor Code section 226.7.

21 74. Defendants' conduct violates applicable IWC Wage Order and California Labor Code
22 sections 226.7 and 512(a).

23 75. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
24 Plaintiff and the other class members are entitled to recover from Defendants one additional hour
25 of pay at the employee's regular rate of compensation for each workday that they experienced a
26 non-compliant meal period.

27 ///

28 ///

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT REST PERIODS

AND PREMIUMS IN LIEU THEREOF

(Against ALL Defendants)

76. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 75 of this Complaint.

77. At all relevant times, Plaintiff's and the other class members' employment by Defendants was governed by the applicable IWC Wage Order and California Labor Code section 226.7.

78. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

79. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

80. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting them to take a ten (10) minute rest period for each four (4) hour period they worked.

81. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods, miss their rest periods, and/or take late rest periods and failed to pay Plaintiff and the other class members with a rest period premium for non-compliant rest periods.

82. During the relevant time period, Defendants failed to pay Plaintiff and the other class members every rest period premium due pursuant to California Labor Code section 226.7

83. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

84. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each non-compliant rest period was not provided.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

(Against ALL Defendants)

85. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 84 of this Complaint.

86. At all relevant times, California Labor Code section 204 provides that, other than those wages due upon termination of an employee, all wages earned by any person in any employment, between the 1st and 15th days, inclusive, of any calendar month, are due and payable between the 16th and the 26th day of the month during which the labor was performed and all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month are due and payable between the 1st and the 10th day of the following month.

87. At all relevant times, California Labor Code section 204 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.

88. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

89. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

///

///

///

///

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON TERMINATION

(Against ALL Defendants)

90. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 89 of this Complaint.

91. At all relevant times, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment with less than seventy-two (72) hours' notice, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, and if the employee has given seventy-two (72) hours' notice, in which case the employee is entitled to his or her wages at the time of quitting.

92. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of being termed.

93. Defendants' failure to pay Plaintiff and the other class members who were no longer employed by Defendants' their earned and unpaid wages within seventy-two (72) hours of being termed, is in violation of California Labor Code sections 201 and 202.

94. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall accrue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but for no longer than thirty (30) days.

95. Pursuant to California Labor Code section 203, Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum.

///

///

///

///

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS

(Against ALL Defendants)

96. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 95 of this Complaint.

97. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing containing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages must be recorded in ink or other indelible form, properly dated, showing the month, day, and year.

98. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: Defendants' failure to include the total number of hours worked by Plaintiff and the other class members and the name and address of the legal entity of the employer.

99. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered irreparable injury and damage because they were denied their legal right to receive and their interest in receiving accurate and itemized wage statements pursuant to California Labor Code section 226(a).

100. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

1 101.Plaintiff and the other class members are also entitled to injunctive relief to ensure
2 compliance with this section, pursuant to California Labor Code section 226(h).

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO MAINTAIN REQUISITE PAYROLL RECORDS**

5 **(Against ALL Defendants)**

6 102.Plaintiff restates and incorporates by this reference as if fully set forth herein
7 paragraphs 1 through 101 of this Complaint.

8 103.Pursuant to California Labor Code section 1174(d), an employer must keep, at a
9 central location in the state or at the plants or establishments at which employees are employed,
10 payroll records showing the hours worked daily by and the wages paid to, and the number of
11 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
12 respective plants or establishments. These records must be kept in accordance with the
13 application California Labor Code and must be kept on file for no less than two years.

14 104.Defendants have intentionally and willfully failed to keep accurate and complete
15 payroll records showing the daily hours worked and the wages paid, to Plaintiff and the other
16 class members.

17 105.As a result of Defendants' violation of California Labor Code section 1174(d),
18 Plaintiff and the other class members have suffered injury and damage to their statutorily-
19 protected rights because they were denied both their legal right and protected interest, in having
20 available, accurate and complete payroll records pursuant to California Labor Code section
21 1174(d).

22 **NINTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

24 **(Against ALL Defendants)**

25 106.Plaintiff restates and incorporates by this reference as if fully set forth herein
26 paragraphs 1 through 105 of this Complaint.

27 ///

28 ///

1 107.Pursuant to California Labor Code sections 2800 and 2802, an employer must
2 reimburse its employee for all necessary business expenses incurred by the employee in direct
3 consequence of the discharge of his or her job duties or obedience to the employer's directions.

4 108.Plaintiff and the other class members incurred necessary business-related expenses
5 and costs that were not fully reimbursed by Defendants as required by the California Labor Code.

6 109.Defendants have intentionally and willfully failed to reimburse Plaintiff and the other
7 class members for all necessary business-related expenses and costs in violation of the California
8 Labor Code.

9 110.Plaintiff and the other class members are entitled to recover from Defendants their
10 business-related expenses and costs incurred during their employment but not reimbursed, plus
11 interest.

12 **TENTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA**

14 **BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**

15 **(Against ALL Defendants)**

16 111.Plaintiff restates and incorporates by this reference as if fully set forth herein
17 paragraphs 1 through 110 of this Complaint.

18 112.Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
19 and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors.
20 Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure section 1021.5.

22 113.Defendants' activities as alleged herein are violations of California law and constitute
23 unlawful business acts and practices in violation of California Business & Professions Code
24 section 17200, et seq.

25 114.A violation of California Business & Professions Code section 17200, et seq. may be
26 predicated on the violation of any state or federal law. Defendants' policies and practices of
27 requiring Plaintiff and the other class members, to work overtime without properly compensating
28 them violate California Labor Code sections 510 and 1198. Defendants' policies and practices

of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Defendants' policies and practices of requiring Plaintiff and the other class members, to endure non-compliant meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

115. As a result of violating California law, Defendants unlawfully gained an unfair advantage over other businesses.

116. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not limited to the loss of money and/or property.

117. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of litigation costs.

ELEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 2698, ET SEQ.

(Against ALL Defendants)

118. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 117 of this Complaint.

119. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

1 120. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
 2 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
 3 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
 4 a civil penalty.

5 121. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
 6 employees” as defined by California Labor Code section 2699(c) in that they are all current or
 7 former employees of Defendants, and one or more of the alleged violations was committed against
 8 them.

9 **Failure to Pay Overtime**

10 122. Defendants’ failure to pay overtime in violation of the Wage Orders and California
 11 Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity
 12 prohibited by California Labor Code sections 510 and 1198.

13 **Failure to Pay Minimum Wage**

14 123. Defendants’ failure to pay minimum wage in violation of the Wage Orders and
 15 California Labor Code sections 1194, 1197, 1197.1, as alleged above, constitutes unlawful and/or
 16 unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1.

17 **Failing to Provide Meal Periods**

18 124. Defendants’ failure to provide legally required meal periods in violation of the Wage
 19 Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes
 20 unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

21 **Failure to Provide Rest Periods**

22 125. Defendants’ failure to provide legally required rest periods in violation of the Wage
 23 Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or
 24 unfair activity prohibited by California Labor Code section 226.7.

25 **Failure to Timely Pay Wages Upon Termination**

26 126. Defendants’ failure to timely pay wages upon termination in violation of California
 27 Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity
 28 prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

127. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

128. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

129. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

130. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

131. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a 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;
- b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for

1 the initial violation, and one hundred dollars (\$100) for each aggrieved employee
2 per pay period for each subsequent violation;

3 c. Penalties under California Labor Code section 210 in addition to, and entirely
4 independent and apart from, any other penalty provided in the California Labor
5 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
6 pay period for the initial violation, and two hundred dollars (\$200) for each
7 aggrieved employee per pay period for each subsequent violation; and

8 d. Any and all additional penalties and sums as provided by the California Labor
9 Code and/or other statutes.

10 132. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
11 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
12 Workforce Development Agency for the enforcement of labor laws and education of employers
13 and employees about their rights and responsibilities and twenty-five percent (25%) to the
14 aggrieved employees.

15 133. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
16 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff individually, and on behalf of other members of the general
19 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
20 as follows:

21 **CLASS CERTIFICATION**

- 22 1. That this action be certified as a class action;
23 2. That Plaintiff be appointed as the representative of the Class;
24 3. That counsel for Plaintiff be appointed as Class Counsel; and
25 4. That Defendants provide to Class Counsel immediately the full names and most
26 current/last known contact information (mailing address, e-mail address, and
27 telephone number) of all class members.

28 ///

AS TO THE FIRST CAUSE OF ACTION

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to properly pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at appropriate overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

AS TO THE SECOND CAUSE OF ACTION

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;
11. For general unpaid wages and such general and special damages as may be appropriate;
12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;
13. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);
15. For liquidated damages pursuant to California Labor Code section 1194.2; and
16. For such other and further relief as the Court may deem just and proper.

///

///

AS TO THE THIRD CAUSE OF ACTION

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide compliant meal periods (including second meal periods) to Plaintiff and the other class members;
18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a non-compliant meal period was endured;
19. For all actual, consequential, and incidental losses and damages, according to proof;
20. For premium wages pursuant to California Labor Code section 226.7(c);
21. For pre-judgment interest on any unpaid wages from the date such amounts were due;
22. For reasonable attorneys' fees and costs of suit incurred herein; and
23. For such other and further relief as the Court may deem just and proper.

AS TO THE FOURTH CAUSE OF ACTION

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide compliant rest periods to Plaintiff and the other class members;
25. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a non-compliant rest period was endured;
26. For all actual, consequential, and incidental losses and damages, according to proof;
27. For premium wages pursuant to California Labor Code section 226.7(c);
28. For pre-judgment interest on any unpaid wages from the date such amounts were due; and
29. For such other and further relief as the Court may deem just and proper.

AS TO THE FIFTH CAUSE OF ACTION

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time

required by California Labor Code section 204 to Plaintiff and the other class members;

31. For all actual, consequential, and incidental losses and damages, according to proof;
32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and
33. For such other and further relief as the Court may deem just and proper.

AS TO THE SIXTH CAUSE OF ACTION

34. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;
35. For all actual, consequential, and incidental losses and damages, according to proof;
36. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employment;
37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and
38. For such other and further relief as the Court may deem just and proper.

AS TO THE SEVENTH CAUSE OF ACTION

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide them with accurate itemized wage statements;
40. For actual, consequential and incidental losses and damages, according to proof;
41. For statutory penalties pursuant to California Labor Code section 226(e);
42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and
43. For such other and further relief as the Court may deem just and proper.

///

AS TO THE EIGHTH CAUSE OF ACTION

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

AS TO THE NINTH CAUSE OF ACTION

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

AS TO THE TENTH CAUSE OF ACTION

53. The Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to pay at least minimum wages to Plaintiff and the other class members for all hours worked, failing to provide compliant meal and rest periods to Plaintiff and the other class members, failing to timely pay Plaintiff's and the other class members' wages as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage and distribute any and all funds acquired from Defendants and determined to have been wrongfully attained as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

AS TO THE ELEVENTH CAUSE OF ACTION

58. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and

59. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, hereby demands a trial by jury

DATED: August 28, 2024

BROCK & GONZALES, LLP

By:



DANIELLE L. GRUPPCHANG
Attorneys for Plaintiff

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6701 Center Drive West, Ste. 610, Los Angeles, CA 90045.

On August 28, 2024, I served the foregoing documents described as **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action, addressed as follows:

Jeanine D. DeBacker, Esq.

MCPHARLIN SPRINKLES & THOMAS LLP

720 University Avenue, Ste. 250B

Los Gatos, CA 95032

jdebacker@mstpartners.com

Nalejandro@mstpartners.com

Attorneys for Defendants, REAL COMMUNITY SERVICES, INC.; REAL COMMUNITY SERVICES, LLC, NEMIA HOME, INC., and AMNE CORPORATION

☒ **BY ONLINE SUBMISSION**

The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **By E-Mail**, I transmitted the document to the e-mail address of the addressee(s).

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2024, at Los Angeles, California.


Brenda Barragan