

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
CHELSEA D. HOLLINS, State Bar No. 305229
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiff Kayla Bereal-Murray, individually,
and on behalf of all others similarly situated

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

KAYLA BEREAL-MURRAY,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

FIVE ACRES – THE BOYS’ AND
GIRLS’ AID SOCIETY OF LOS
ANGELES COUNTY; and DOES 1
through 20, inclusive,

Defendants.

Case No. 21STCV20832

*Assigned for all purposes to
Hon. Judge Daniel J. Buckley
Dept. 1*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Failure to Reimburse Necessary Business Expenses; and
7. Violation of Business and Professions Code §§ 17200, *et seq.*
8. Enforcement of Labor Code § 2698 *et seq.*

FILED
Superior Court of California
County of Los Angeles

01/07/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Miro Deputy

1 Plaintiff Kayla Bereal-Murray, individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kayla Bereal-Murray (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants Five Acres – The Boys’ and Girls’ Aid Society of Los Angeles
7 County, and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of herself
8 individually and on behalf of California citizens who are and were employed by Defendants as
9 non-exempt employees throughout California.

10 2. Defendants are in the business of providing child abuse and foster care services.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay overtime wages at the proper rates;
- 18 (b) Failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (c) Failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (d) Failing to provide accurate itemized wage statements;
- 22 (e) Failing to pay all wages due upon separation of employment; and
- 23 (f) Failing to reimburse all business expenses incurred by the employee in
24 direct consequence of the discharge of his or her duties.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all
26 others similarly situated in California to recover, among other things, unpaid wages and
27 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
28 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198,

1 2800, 2802, 2698 *et seq.* and Code of California Civil Procedure § 1021.5.

2 **JURISDICTION AND VENUE**

3 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
4 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
5 of the Superior Court and will be established according to proof at trial.

6 7. This Court has jurisdiction over this action pursuant to the California
7 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
8 causes except those given by statutes to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 8. This Court has jurisdiction over all Defendants because, upon information and
11 belief, they are citizens of California, have sufficient minimum contacts in California, or
12 otherwise intentionally avail themselves of the California market so as to render the exercise of
13 jurisdiction over them by the California courts consistent with traditional notions of fair play
14 and substantial justice.

15 9. Venue is proper in this Court because, upon information and belief, Defendants
16 reside, transact business, or have offices in this county, or the acts and omissions alleged herein
17 took place in this county.

18 **THE PARTIES**

19 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
20 the Class Period in California.

21 11. Plaintiff is informed and believes, and thereon alleges that at all times
22 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
23 Orders as employers, whose employees were and are engaged throughout this county and the
24 State of California.

25 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
26 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
27 Complaint and serve such fictitiously named defendants once their names and capacities
28 become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

20. Plaintiff's proposed class consists of and is defined as follows:

Class

1 All California citizens currently or formerly employed by Defendants as non-
2 exempt employees in the State of California at any time between December 7,
3 2016¹ the date the class is certified (“Class”).

4 21. Plaintiff also seeks to certify the following subclasses of employees:

5 Waiting Time Subclass

6 All Class Members who separated their employment with Defendants at any time
7 between December 7, 2017 and the date the class is certified (“Subclass” or
8 “Waiting Time Subclass”).

9 Wage Statement Subclass

10 All Class Members who received a wage statement from Defendants at any time
11 between December 7, 2020 and the date the class is certified (“Subclass” or
12 “Wage Statement Subclass”).

13 22. Plaintiff reserves the right to establish other or additional subclasses, or modify
14 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
15 discovery, and specific theories of liability.

16 23. Members of the Class and the Subclasses described above will be collectively
17 referred to as “Class Members.”

18 24. There are common questions of law and fact as to the Class Members that
19 predominate over any questions affecting only individual members including, but not limited to,
20 the following:

- 21 (a) Whether Defendants paid Plaintiff and Class Members overtime
22 compensation at the proper rates;
- 23 (b) Whether Defendants required Plaintiff and Class Members to work over
24 8 hours per day, over twelve (12) hours per day, and/or over forty (40)
25 hours per week and failed to pay them overtime compensation at the
26

27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

proper rate;

- (c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without compensation;
- (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks without compensation;
- (e) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements;
- (f) Whether Defendants failed to timely pay Plaintiff and the Subclass all wages due upon termination or within seventy-two (72) hours of resignation;
- (g) Whether Defendants required Plaintiff and class members to incur expenses for work and then failed to adequately reimburse Plaintiff and Class Members for such expenses;
- (h) Whether Defendants' conduct was willful or reckless; and
- (i) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than one 100 individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay,

1 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
2 sustained by the Class Members, because they arise out of and are caused by Defendants'
3 common course of conduct as alleged herein.

4 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
5 interests of all Class Members because it is in her best interest to prosecute the claims alleged
6 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's
7 attorneys, as proposed class counsel, are competent and experienced in litigating large
8 employment class actions and versed in the rules governing class action discovery,
9 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
10 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
11 for the prosecution of this action for the substantial benefit of the Class Members.

12 (d) Superiority: The nature of this action makes use of class action
13 adjudication superior to other methods. A class action will achieve economies of time, effort,
14 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
15 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
16 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
17 manage this case as a class action.

18 (e) Public Policy Considerations: Employers in the State of California
19 violate employment and labor laws every day. Current employees are often afraid to assert their
20 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
21 actions because they believe their former employers might damage their future endeavors
22 through negative references and/or other means. Class actions provide class members who are
23 not named in the complaint with a type of anonymity that allows for the vindication of their
24 rights while affording them privacy protections.

25 **GENERAL ALLEGATIONS**

26 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
27 California residents as non-exempt employees at Defendants' California business location(s).

28 27. Defendants continue to employ non-exempt employees within California.

1 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
3 who were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants
6 improperly calculated the overtime rate of pay for Plaintiff and Class Members because the
7 rates did not include non-discretionary wages, including, but not limited to, bonuses, and/or
8 other incentive pay into the computation of their regular rate of pay for purposes of calculating
9 the overtime rate of pay.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive all required meal
12 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
13 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
14 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
15 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
16 rate of pay when they did not receive a timely, uninterrupted meal period.

17 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
19 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
20 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
21 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
22 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to reimbursement for
25 necessary expenditures incurred in connection with the performance and execution of their job
26 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
27 adequate reimbursement for necessary business expenses, including, but not limited to,
28 reimbursement for cell phone expenses.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that the Wage Statement Subclass Members were entitled to receive
3 itemized wage statements that accurately showed the gross and net wages earned, employer
4 name and address, total hours worked, all applicable hourly rates in effect, and the number of
5 hours worked at each hourly rate in accordance with California law. In violation of the Labor
6 Code, the Wage Statement Subclass Members were not provided with accurate itemized wage
7 statements.

8 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that the Waiting Time Subclass members were entitled to timely payment
10 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
11 Time Subclass did not receive payment of all wages within permissible time periods.

12 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known they had a duty to compensate Plaintiff and Class Members, and
14 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
15 intentionally failed to do so in order to increase Defendants' profits.

16 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
17 against Defendants on behalf of herself and all Class Members to recover, among other things,
18 unpaid wages, unpaid meal period premium payments, unpaid rest period premium payments,
19 interest, attorneys' fees, penalties, costs, and expenses.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME WAGES**

22 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

23 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 38. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
26 unlawful to employ persons without compensating them at a rate of pay either one and one-half
27 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
28 worked by the person on a daily or weekly basis.

1 39. Specifically, the applicable IWC Wage Orders provide that Defendants are and
2 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
3 and one-half times (1½) their regular rate of pay when working and for all hours worked in
4 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
5 eight (8) hours of work on the seventh day of work in a workweek.

6 40. The applicable IWC Wage Orders further provide that Defendants are and were
7 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
8 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
9 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

10 41. California Labor Code § 510 codifies the right to overtime compensation at one
11 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
12 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
13 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
14 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
15 seventh day of work in a workweek.

16 42. Labor Code § 510 and the applicable IWC Wage Orders provide that
17 employment of more than six days in a workweek is only permissible if the employer pays
18 proper overtime compensation as set forth herein.

19 43. Plaintiff and Class Members were non-exempt employees entitled to the
20 protections of California Labor Code §§ 510 and 1194.

21 44. During the relevant time period, Defendants failed to pay Plaintiff and class
22 members overtime wages at the correct rate because they failed to include non-discretionary
23 wages, including, but not limited to, bonuses, and/or other incentive pay in the computation of
24 their overtime rate of pay, which caused Plaintiff and Class Members to not be paid all
25 overtime wages owed.

26 45. During the relevant time period, Defendants failed to pay Plaintiff and Class
27 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
28 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh

1 day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve
2 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
3 week. To the extent these hours qualify for the payment of overtime, Plaintiff and Class
4 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

5 46. In violation of state law, Defendants knowingly and willfully refused to perform
6 their obligations and compensate Plaintiff and Class Members for all wages earned and all
7 hours worked.

8 47. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
9 overtime and double time compensation, as required by California law, violates the provisions
10 of Labor Code §§ 510 and 1198, and is therefore unlawful.

11 48. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
12 recover their unpaid overtime and double time compensation as well as interest, costs, and
13 attorneys' fees.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

17 49. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein

19 50. Labor Code § 226.7 provides that no employer shall require an employee to work
20 during any meal period mandated by the IWC Wage Orders.

21 51. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
22 employ any person for a work period of more than five (5) hours without a meal period of not
23 less than 30 minutes, except that when a work period of not more than six (6) hours will
24 complete the day's work the meal period may be waived by mutual consent of the employer and
25 the employee."

26 52. Labor Code § 512(a) provides that an employer may not require, cause, or permit
27 an employee to work for a period of more than five (5) hours per day without providing the
28 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if

1 the total work period per day of the employee is not more than six (6) hours, the meal period
2 may be waived by mutual consent of both the employer and the employee.

3 53. Labor Code § 512(a) also provides that an employer may not employ an
4 employee for a work period of more than ten (10) hours per day without providing the employee
5 with a second meal period of not less than thirty (30) minutes, except that if the total hours
6 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
7 consent of the employer and the employee only if the first meal period was not waived.

8 54. During the relevant time period, Plaintiff and Class Members did not receive
9 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
10 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

11 55. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
12 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
13 compensation for each work day that a compliant meal period is not provided.

14 56. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
15 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
16 and section 11 of the applicable IWC Wage Order.

17 57. As a result of Defendants' failure to pay Plaintiff and Class Members an
18 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
19 Class Members suffered and continue to suffer a loss of wages and compensation.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PERMIT REST BREAKS**

22 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

23 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 59. Labor Code § 226.7(a) provides that no employer shall require an employee to
26 work during any rest period mandated by the IWC Wage Orders.

27 60. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
28 authorize and permit all employees to take rest periods, which insofar as practicable shall be in

1 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
2 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
3 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

4 61. During the relevant time period, Plaintiff and Class Members did not receive a
5 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
6 they were required to work through their daily rest periods and/or were not authorized to take
7 their rest periods.

8 62. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
9 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
10 regular rate of compensation for each work day that a compliant rest period is not provided.

11 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
12 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
13 226.7(b) and section 12 of the applicable IWC Wage Order.

14 64. As a result of Defendants’ failure to pay Plaintiff and Class Members an
15 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
16 Members suffered and continue to suffer a loss of wages and compensation.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Violation of Labor Code § 226)

20 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 66. Labor Code § 226(a) requires Defendants to provide each employee with an
23 accurate wage statement in writing showing nine pieces of information, including, the
24 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
25 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
26 basis, (4) all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
28 period for which the employee is paid, (7) the name of the employee and the last four digits of

1 his or her social security number or an employee identification number other than a social
2 security number, (8) the name and address of the legal entity that is the employer, and (9) all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee.

5 67. During the relevant time period, Defendants have knowingly and intentionally
6 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
7 Members. The deficiencies include, among other things, the failure to correctly state the gross
8 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
9 of hours worked at each hourly rate by the Class Members.

10 68. As a result of Defendants' knowing and intentional failure to comply with Labor
11 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
12 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
13 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
14 Members were denied both their legal right to receive, and their protected interest in receiving,
15 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
16 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
17 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
18 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
19 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
20 Defendants.

21 69. The Class Members are entitled to recover from Defendants the greater of all
22 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
23 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
24 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
25 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

26 70. Defendants' violations of California Labor Code § 226(a) prevented the Class
27 Members from knowing, understanding, and disputing the wages paid to them and resulted in
28 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and

1 intentional failure to comply with California Labor Code § 226(a), the Class Members have
2 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
3 proof at trial.

4 71. The Class Members are also entitled to injunctive relief under California Labor
5 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
6 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
7 obtaining this injunctive relief.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

10 (Violation of Labor Code §§ 201, 202, and 203)

11 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 73. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
14 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
15 if an employee voluntarily leaves his or her employment, his or her wages shall become due
16 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
17 seventy-two (72) hours previous notice of an intention to quit, in which case the employee is
18 entitled to his or her wages at the time of quitting.

19 74. During the relevant time period, Defendants willfully failed to pay the Waiting
20 Time Subclass all their earned wages upon termination, including, but not limited to, proper
21 overtime compensation, meal period premiums, and rest period premiums either at the time of
22 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

23 75. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
24 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
25 in violation of Labor Code §§ 201 and 202.

26 76. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
27 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
28 then the wages of the employee shall continue as a penalty from the due date at the same rate

1 until paid or until an action is commenced; but the wages shall not continue for more than thirty
2 (30) days.

3 77. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
4 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
5 members' regular daily wages at their regular hourly rate of pay for each day they were not
6 paid, up to a maximum of thirty (30) days.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 (Violation of Labor Code §§ 2800, 2802)

10 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 79. Labor Code § 2800 states that an employer shall in all cases indemnify his
13 employee for losses.

14 80. Labor Code § 2802 requires employers to indemnify their employees for all
15 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
16 their duties.

17 81. Section 9 of the applicable IWC Wage Order states that when tools or equipment
18 are required by the employer or are necessary to the performance of a job, such tools and
19 equipment shall be provided and maintained by the employer.

20 82. During the relevant time period, Defendants required Plaintiff and class members
21 to incur cell phone expenses without properly compensating them for such expenses.

22 83. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
23 Plaintiff and class members for these expenses.

24 84. In committing the violations as herein alleged, Defendants have intentionally and
25 willfully failed to fully reimburse Plaintiff and class members for necessary business-related
26 costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to
27 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
28 expenses, and attorney's fees.

1
2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

4 (Violation of Business and Professions Code §§ 17200, *et seq.*)

5 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 86. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
8 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice
9 ...”

10 87. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
11 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
12 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
13 suffer injuries-in-fact.

14 88. Defendants’ policies and practices violated state law in at least the following
15 respects:

- 16 (a) Failing to pay all wages to Plaintiff and Class Members in violation of
17 Labor Code §§ 510, 1194, 1194.2, and 1198;
- 18 (b) Failing to provide compliant meal periods without paying Plaintiff and
19 Class Members premium wages for every day said meal periods were not
20 provided in violation of Labor Code §§ 226.7 and 512;
- 21 (c) Failing to authorize or permit compliant rest breaks without paying
22 Plaintiff and Class Members premium wages for every day said rest
23 breaks were not authorized or permitted in violation of Labor Code §
24 226.7;
- 25 (d) Failing to provide the Class Members with accurate itemized wage
26 statements in violation of Labor Code § 226;
- 27 (e) Failing to timely pay all earned wages to the members of the Waiting
28 Time Subclass upon separation of employment in violation of Labor

Code §§ 201, 202, and 203; and

(f) Failing to reimburse business expenses in violation of Labor Code §§ 2800 and 2802.

89. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages, failing to provide meal periods and rest periods or compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all wages due and owing upon separation of employment in a timely manner, and failing to reimburse business expenses, all in order to decrease their costs of doing business and increase their profits.

90. At all relevant times herein, Defendants held themselves out to Plaintiff and Class Members as being knowledgeable concerning the labor and employment laws of California.

91. At the time Plaintiff and Class Members were hired, Defendants knowingly, intentionally, and wrongfully misrepresented to each of them their conformance with the California Labor Code and IWC Wage Orders, including proper payments required by law.

92. At all times relevant herein, Plaintiff and Class Members relied on and believed Defendants' representations concerning their conformance with California's wage and hour laws all to their detriment.

93. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

94. As a result of Defendants' intentional, willful, purposeful, and wrongful misrepresentation of their conformance with the California Labor Code and IWC Wage Orders, Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial.

95. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business

1 and Professions Code §§ 17200, *et seq.*

2 96. As a result of the unfair and unlawful business practices of Defendants, as
3 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
4 restitution in an amount to be shown according to proof at trial.

5 97. Plaintiff seeks to enforce important rights affecting the public interest within the
6 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
7 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
8 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
9 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
10 Procedure § 1021.5.

11 **EIGHTH CAUSE OF ACTION**

12 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

13 98. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
14 though fully set forth herein.

15 99. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
16 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
17 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
18 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
19 an aggrieved employee on behalf of himself or herself and other current or former employees
20 pursuant to the procedures specified in Labor Code § 2699.3.

21 100. For all provisions of the Labor Code except those for which a civil penalty is
22 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
23 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
25 period in which Defendants violated these provisions of the Labor Code.

26 101. Defendants' conduct violates numerous Wage Order and Labor Code sections,
27 including, but not limited to, the following:

28 //

- a. violation of Labor Code §§ 201-204, 210, 510, and 1198 for failure to timely pay all earned wages owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;
- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 2800 and 2802 for failure to reimburse business expenses;
- e. violation of Labor Code § 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and
- f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

102. Plaintiff is an “aggrieved employee” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

103. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

104. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

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105. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Kayla Bereal-Murray as the class representative;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

13. For civil penalties;

14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, 2802(c), and 2698 *et seq.*; and

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15. For such other relief as the Court deems just and proper.

Dated: January 7, 2022

AEGIS LAW FIRM, PC

By: 
Chelsea D. Hollins
Attorneys for Plaintiff Kayla Bereal-Murray

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On January 7, 2022, I served the foregoing document entitled:

• **FIRST AMENDED COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Brian D. Martin
Geoffrey D. La Val
ATKINSON, ANDELSON, LOYA, RUUD, & ROMO
4275 Executive Square, Suite 700
La Jolla, CA 92037-1477
Telephone: (858) 485-9526
Facsimile: (858) 485-9412
Brian.Martin@aalrr.com
Geoffrey.LaVal@aalrr.com

Attorneys for Defendant:

FIVE ACRES – THE BOYS’ AND GIRLS’ AID SOCIETY OF LOS ANGELES COUNTY

☐ **(BY MAIL)** I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on January 7, 2022, at Irvine, California.

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5 Delaney Graves
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