

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**

11 SHALISA LOOMIS, an individual;
12 Plaintiff,

13 vs.

14 ONORIA HEALTHCARE PROVIDER, INC.; a
15 California Corporation; SANTE HOME
HEALTH, INC., a California Corporation; and
16 DOES 1 through 20, inclusive,
17 Defendants.

Case No. CIVSB 2214857

*Assigned to Honorable David Cohn
Dept. S-26*

FIRST AMENDED COMPLAINT

**AMENDED AS A MATTER OF
STATUTORY RIGHT UNDER LABOR
CODE SECTION 2699.3(a)(2)(C)**

 **FAXED**

1
2 Plaintiffs Shalisa Loomis and Stev Betancourt allege as follows:

3 **INTRODUCTION**

4 1. Loomis brings class action claims against Defendants Onoria Healthcare Provider, Inc.
5 (“Onoria”) and Sante Home Health, Inc. (“Sante”) (collectively, “Defendants”) for unpaid wages,
6 statutory penalties, attorney’s fees, costs, and interest, due to Defendants’ violations of the Labor Code,
7 on behalf of herself and all other similarly situated that worked for Defendants as non-exempt employees
8 from August 26, 2017, to the present (the “Class Members”).

9 2. Betancourt brings claims against Defendants under the Private Attorneys General Act
10 (“PAGA”) on behalf of himself, the State of California, and all other non-exempt employees of
11 Defendant that have worked for Defendants since August 26, 2020, to the present (the “Aggrieved
12 Employees”).

13 3. The Class Members and Aggrieved Employees will be collectively referred to as the
14 “Employees”) throughout this First Amended Complaint.

15 4. Defendants jointly controlled/control and governed/govern the Class Members’
16 employment terms and conditions, including their wages, hours, and general working conditions, via the
17 same policies, procedures, and practices (the “Policies, Procedures, and Practices”).

18 5. Through the Policies, Procedures, and Practices, Defendants systematically violated the
19 Class Members’ rights under the Labor Code.
20

21 **THE PARTIES**

22 6. Defendants are California corporations doing business in California, including San
23 Bernardino County.

24 7. Plaintiff is unaware of the real names or capacities of the defendants that they have sued
25 under the fictitious names DOES 1 through 20. However, she will seek this Court’s leave to amend this
26 Complaint and serve such fictitiously named Defendants once their names and capacities become known.

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

9. Plaintiff is informed and believes that every Defendant acted as the other Defendant's agent or joint employer and conducted a joint scheme, business plan, or policy accordingly. Thus, the acts of each Defendant are legally attributable to the other defendant.

10. Defendants also acted within the scope of such agency or employment or ratified every act or omission alleged by Plaintiff. Defendants also aided and abetted each and all the other Defendants' acts and omissions in proximately causing Plaintiff's damages.

11. Plaintiff is informed and believes that each Defendant is intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged in this Complaint.

VENUE

12. The Superior Court of California, County of San Bernardino, is the proper venue for this action because the acts giving rise to Plaintiff's claims occurred substantially in San Bernardino County.

13. The Superior Court of California, County of San Bernardino has personal jurisdiction over Defendants because they personally availed themselves of the laws of the State of California and had minimum contact with California such that the exercise of personal jurisdiction over them would be consistent with the traditional notions of fair play and substantial justice.

BACKGROUND FACTS

14. The Employees worked for Defendants as Licensed Vocational Nurses, Health Aides, Nurse Practitioners, Physical Therapists, and Registered Nurses.

15. The Employees worked five to six days a week as full-time employees, while picking up a voluntary “per-diem” (piece-rate) shift on the weekends.

16. The Employees' duties were to schedule daily patient appointments/visits directly with patients; (b) travel to the patients' homes with medical supplies provided by Defendants; (c) physically care for the patients; and (d) "chart," i.e., prepare and log the necessary medical charts and notes.

17. The Employees were also expected to (a) put patients first; (b) arrive timely at visits/appointments; (c) provide care competently; and (d) promptly respond to patients' needs.

18. The Employees performed their duties and met the expectations, Defendants subjected them to disciplinary action for failures in patient care and administration.

1 **19.** All Employees were subject to the Policies, Procedures, and Practices. However, the
2 Policies, Procedures, and Practices were and are still unlawful in several ways.

3 **20.** First, Defendants did not pay any wages for work exceeding forty hours a week, and thus,
4 failed to pay the minimum wage for all hours worked. Indeed, Defendants only paid the Employees for
5 eight hours a day, no matter how many hours they worked. Due to this practice, Defendants failed to pay
6 the Employees the minimum wage for all hours worked—because their daily job duties and demands
7 caused them to regularly work more than eight hours a shift. Defendants required the Employees to care
8 for six to seven patients daily and perfectly chart and log the visits—while threatening the Employees’
9 jobs for failing to do the same. But the Employees could not perform all duties and meet all expectations
10 daily in an eight-hour window. So, they worked over eight hours a day without pay. Defendants also
11 failed to pay overtime wages for overtime work through this policy and practice.

12 **21.** Second, Defendants knowingly did not pay for travel time and administrative time. This
13 resulted in a failure to pay the minimum wage for all hours worked and it also resulted in the failure to
14 pay overtime wages.

15 **22.** After all, Defendants knew the Employees traveled to and from patients’ homes and that
16 they performed administrative work, including scheduling appointments and charting. Defendants
17 required the work. Such work is part of the duties. Also, the expectations are that patients come first,
18 that timely patient care is essential, and that failures with patient care or administration are grounds for
19 discipline.

20 **23.** Critically, the Employees were required to carry various (medical) supplies and tools
21 provided to them by Defendants to the patients’ homes. Because the Employees were required to be
22 timely and put patients first—thus forcing them to travel to and from patients’ homes at the times
23 required by the patients’ medical needs—the Employees were not free to do what they wanted during
24 the “travel time.” Thus, they were controlled during the travel time.

25 **24.** Defendants also exercised sufficient control over the Employees during the
26 administrative time such that it constitutes “hours worked.” Defendants required the Employees to
27 perform the administrative work in a specific manner (as they were instructed and trained on at
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1 orientation) and by a specific time (by the end of every day), using tools and resources provided by
2 Defendants—and the Employees had no discretion over these conditions.

3 **25.** Further, because the Employees necessarily had to travel to the patients’ homes to provide
4 care Defendants cannot deny that they suffered and permitted the Employees to work during travel time.
5 Similarly, by requiring the Employees to perform the administrative work, Defendants suffered and
6 permitted the Employees to work after patient visits.

7 **26.** Third, Defendants auto-deducted meal periods. But, because Defendants also discouraged
8 and impeded meal periods, and denied the Employees a reasonable opportunity to take meal periods, the
9 auto-deduct practice resulted in a failure to pay the minimum wage for all hours worked and a failure to
10 pay overtime wages.

11 **27.** Fourth, Defendants shaved time. Particularly, when the Employees logged more than 40
12 hours a week, Defendants manually adjusted the timecards to reflect only 40 hours a week. This practice
13 resulted in a failure to pay the minimum wage for all hours worked and a failure to pay overtime wages.

14 **28.** Fifth, Defendants required the Employees to apply for payment of the overtime and to
15 explain why the overtime was necessary. But even then, Defendants did not always “approve” the
16 payment of all work that was claimed. They cut hours worked. Thus, this practice resulted in a failure to
17 pay overtime.

18 **29.** Fifth, Defendants paid for less piece-rate work than was performed (when the Employees
19 sought payment for piece-rate work). Defendants would simply decide how many piece-rate units to pay
20 for, regardless of how many were completed by the Employees. This practice resulted in a failure to pay
21 the minimum wage for all hours worked.

22 **30.** Sixth, Defendants failed to pay the minimum wage for all hours worked when they failed
23 to pay piece-rate employees for all non-productive time. Defendants did not pay piece-rate employees
24 for rest breaks. Nor did they pay for travel time or administrative time. Defendants only paid the
25 Employees for patient visits. This practice constitutes a violation of the piece-rate and minimum wage
26 requirements because, again, travel time and administrative time are separately compensable.
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1 **31.** Seventh, Defendants failed to pay the Employees the minimum wage when they required
2 the Employees to attend quarterly staff development programs without pay. To ensure that the
3 Employees did not skip the meetings, Defendants threatened them with disciplinary action.

4 **32.** Eighth, Defendant failed to pay overtime because, when it did pay for “authorized”
5 overtime work, Defendants paid for such work at a straight-time rate of pay. On information and belief,
6 Defendants maintained this policy and practice until at least the beginning of 2022.

7 **33.** Ninth, Defendants systematically failed to provide the Employees meal periods and
8 permit and authorize rest breaks by: (1) implementing and enforcing a facially invalid meal period policy
9 while auto-deducting meal periods; (2) implementing a facially invalid rest break policy; and (3)
10 impeding and discouraging meal periods and rest breaks.

11 **34.** Defendants’ meal period policy is silent on the timing of the meal periods, even though
12 the first meal period must be taken before the start of the sixth hour of employment. Also, the policy
13 stated that meal periods would be taken to ensure coverage for patient care, e.g., they would only be
14 taken when patient care would not be disrupted. So that is exactly what the Employees did. They took
15 meal periods only if there was time, and only to the extent they could, based on patients’ needs—which
16 was rarely.

17 **35.** Here, Defendants’ uniform written rest break policy authorized rest periods only when
18 Employees worked at least five hours. Thus, Defendants’ rest period policy failed to provide a first rest
19 break for Employees working shifts of between 3.5 and 5 hours, and a third rest break for Employees
20 working shifts of between 10 and 12 hours.

21 **36.** Here, Defendants’ automatic meal period deduction practice improperly shifts the burden
22 of timekeeping to the Employees. As a result of the automatic deductions, Defendants maintained
23 policies and practices that systematically underreported meal period violations.

24 **37.** Further, Defendants discouraged and impeded meal periods by: (1) failing to have a fully
25 compliant written policy; (2) pressuring the Employees to meet daily duties and expectations, with the
26 threat of discipline for failing to do so; (3) only paying the Employees for 8 hours a day, thus
27 incentivizing them to miss meal periods or rest breaks because, between the eight-hour cap and the threat
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1 of losing their jobs, the Employees prioritized their patients—which again was an express expectation
2 that Defendants had of the Employees.

3 **38.** Critically, it was also Defendants’ policy that meal periods and rest breaks would be
4 scheduled/taken in a way that ensured that all patient care was covered—another way of saying that meal
5 periods and rest breaks were second to ensuring timely patient visits and care.

6 **39.** Tenth, Defendants also failed to issue accurate wage statements, in two ways.

7 **40.** The facial violation is based on Defendants inaccurately stating vacation hours under
8 “rate.” Defendants will claim that the violation is harmless and de minimis. However, neither argument
9 insulates Defendants from liability for this systematic error. Betancourt is seeking civil penalties under
10 PAGA for a violation of Section 226(a), and therefore does not have to satisfy the “injury” and “knowing
11 and intentional” requirements of Section 226(e).

12 **41.** The derivative wage statement claim is based on several violations related to the unpaid
13 wage claims. By stating that the Employees worked 88 hours in a bi-monthly pay period, Defendants
14 inaccurately stated the hours worked by the Employees. Through its auto deduct system, Defendants
15 improperly stated the “hours worked.”

16 **42.** They implemented and enforced the auto deduct system in conjunction with non-
17 compliant meal period policies and practices, thus practically ensuring that the Employees would be
18 short-changed the 30 minutes that they worked instead of taking a meal period. In doing as much,
19 Defendants underreported the “hours” worked. By stating (and paying) a straight-time rate for overtime
20 work, Defendants inaccurately stated the rate of pay on wage statements. Defendants also omitted time
21 spent at staff development programs from “hours”. The wage statements for piece-rate work inaccurately
22 stated the number of pieces (visits) by omitting the pieces for which Defendants chose not to pay, and
23 by omitting non-productive time. The wage statements omitted owed meal period and rest break
24 premiums, and in doing as much, failed to accurately state gross and net “wages.” Finally, because they
25 underreported and/or inaccurately stated the hours worked, Defendants relatedly also
26 underreported/inaccurately stated gross and net “wages.”

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43. Eleventh, because Defendants paid the Employees bi-monthly, Defendants were required to pay the Employees all wages owed to them, within 10 days of the end of a pay period—but they violated both requirements. They paid the Employees sixteen days after a pay period ended. And they regularly omitted claimed and unclaimed off-the-clock work, overtime wages (rather than straight-time wages) for overtime work, and premiums for meal periods and rest break violations.

44. Twelfth, Defendants are liable for failure to reimburse necessary business expenses because they did not pay for mileage. The Employees had to daily travel to patients' homes, as a matter of policy (verbally communicated to them during orientation) and practice. But Defendants reimbursed them for gas rather than mileage or actual expenses, thus violating section 2802 of the Labor Code.

45. Thirteenth, Defendants implemented and enforced an unlawful written forfeiture policy for vacation time. Any employee that Defendants terminated lost earned vacation Time. And any Employee that did not give two weeks' notice would also forfeit earned vacation time.

46. Fourteenth, Defendants maintained inaccurate timekeeping records. Their records inaccurately reflected that all Employees worked from 8:30 a.m. to 5:00 p.m., with a meal period from 12:00 p.m. to 12:30 p.m.

47. Fifteenth, upon the termination of an Employee's employment with Defendants, Defendants failed to timely pay said Employee all earned and owed wages. This included all the earned and unpaid wages for off-the-clock work, overtime wages (at the proper rate), wages for all piece-rates complete, wages for non-productive time on piece-rate shifts, and owed meal and rest break premiums.

CLASS ALLEGATIONS

48. Loomis brings this class action lawsuit under section 382 of the Code of Civil Procedure. She brings this case for herself and the other Class Members who suffered violations of the Labor Code, IWC Wage Orders, and the Business and Professions Code.

49. Loomis seeks to certify a class consisting of all Class Members through the date that the Court certifies this case (the “Class”). Loomis also seeks to certify a subclass made up of all Class Members that separated their employment with Defendants within the three years preceding the filing of this case through the date that the Court certifies this case (the “Waiting Time Subclass”).

1 **50.** Loomis reserves the right to modify or re-define the Class, establish additional subclasses,
2 or modify or re-define any class or subclass definition as appropriate based on investigation, discovery,
3 and specific liability theories.

4 **51.** There are questions of law and fact common to the Class Members that predominate over
5 any questions affecting only individual members, including, whether Defendants: (a) failed to pay the
6 minimum wage and overtime wages for all hours worked; (b) failed to pay for non-productive time and
7 all pieces on piece-rate shifts; (c) failed to provide Class Members meal periods, without compensation;
8 (d) failed to authorize and permit the Class Members to take rest breaks, without compensation; (e) failed
9 to provide the Class Members accurate itemized wage statements; (f) failed to timely pay the Waiting
10 Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation; (g) acted
11 willfully or recklessly; (h) failed to reimburse necessary business expenses; and (i) engaged in unfair
12 business practices violating section 17200 of the Business and Professions Code.

13 **52.** There is a well-defined community of interest in this litigation, and the proposed Class
14 and Subclass are readily ascertainable.

15 **53.** The Class Members are so numerous that the joinder of all Class Members is impractical.
16 Although the members of the entire Class and the Waiting Time Subclass are currently unknown to
17 Loomis, on information and belief, Loomis estimates that the Class consists of approximately one-
18 hundred and thirty (130) individuals. The identities of the Class Members are readily ascertainable by
19 inspection of Defendants' employment and payroll records.

20 **54.** The claims (or defenses, if any) of Loomis are typical of the claims (or defenses, if any)
21 of the Class Members because Defendants' failure to comply with the provisions of California's wage
22 and hour laws entitled each Class Member to similar pay, benefits, and other relief. Loomis's injuries
23 and harm are typical of the Class Members' injuries because they arise out of and are caused by
24 Defendants' common course of conduct alleged in this Complaint, e.g., the Policies, Procedures, and
25 Practices.

26 **55.** Loomis will fairly and adequately represent and protect all Class Members' interests
27 because it is in her best interest to prosecute the claims alleged in this complaint to obtain total
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1 compensation and penalties owed to the Class Members. As proposed class counsel, Loomis's attorneys
2 are competent and experienced in litigating large employment class actions. They are versed in the rules
3 governing class action discovery, certification, and settlement. Loomis has incurred and will continue to
4 incur attorneys' fees and costs that have been and will be necessary for the prosecution of this action for
5 the Class Members' substantial benefit.

6 **56.** The nature of this case makes class action adjudication superior to other methods. As far
7 as time, effort, and expense, a class action is more efficient than multiple separate individual lawsuits.
8 And a class action will avoid inconsistent outcomes because the same issues can be adjudicated in the
9 same manner for the entire Class and Waiting Time Subclass at the same time.

10 **57.** If appropriate, the Court can fashion methods to manage this class action efficiently.

11 **CAUSES OF ACTION**

12 **First Cause of Action: Failure to Pay the Minimum Wage**

13 **(By Loomis Against all Defendants)**

14 **58.** Loomis incorporates by reference and re-alleges the preceding allegations as if she stated
15 the allegations within this cause of action.

16 **59.** Under Labor Code sections 1194 and 1197, the minimum wage for employees fixed by
17 the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the
18 minimum is unlawful. Labor Code section 1182.12 provides the minimum wages for all industries. A
19 failure to pay wages for any work is a failure to pay the minimum wage for all hours worked.

20 **60.** Defendants paid the Class Members less than the minimum wage when they failed to pay:
21 (a) for off-the-clock work; (b) for all pieces completed during piece-rate shifts; and (c) for non-
22 productive time during piece-rate shifts.

23 **61.** Thus, during the relevant time, Defendants regularly failed to pay at least minimum wage
24 to the Class Members for all hours worked under Labor Code sections 1194 and 1197, and 1182.12.

25 **62.** Defendants' failure to pay the Class Members the required minimum wage violates Labor
26 Code sections 1194, 1194.2, 1197, and 1182.12 of the Labor Code and section four of the applicable
27 Wage Order.
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1 **63.** Thus, Loomis is entitled to recover, for herself and the other Class Members, the unpaid
2 balance of the minimum wage compensation, interest, costs, and attorney's fees, and liquidated damages
3 in an amount equal to the wages unlawfully unpaid and the accrued interest.

4 **Second Cause of Action: Failure to Pay Overtime Wages**

5 **(By Loomis Against all Defendants)**

6 **64.** Loomis incorporates by reference and re-alleges the preceding allegations as if she stated
7 the allegations within this cause of action.

8 **65.** Under Labor Code section 1198 and the applicable IWC Wage Order, it is unlawful to
9 employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times
10 the person's regular rate of pay, depending on the number of hours worked by the person on a daily or
11 weekly basis.

12 **66.** Further, the applicable IWC Wage Orders required Defendants to pay overtime
13 compensation to the Class Members at the rate of one and one-half times (1½) their regular rate of pay
14 for all hours worked more than eight (8) hours in a day or more than forty (40) hours in a workweek and
15 for the first eight (8) hours of work on the seventh day of work in a workweek.

16 **67.** The applicable IWC Wage Orders also required Defendants to pay overtime
17 compensation to the Class Members at a rate of two times their regular rate of pay when working and
18 for all hours worked more than twelve (12) hours in a day or excess of eight (8) hours on the seventh
19 day of work in a workweek.

20 **68.** Further, Labor Code section 510 codifies the right to overtime compensation at one and
21 one-half (1½) times the regular hourly rate for hours worked more than eight (8) hours in a day or forty
22 (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of work,
23 and overtime compensation at twice the regular hourly rate for hours worked more than twelve (12)
24 hours in a day or excess of eight (8) hours in a day on the seventh day of work in a workweek.

25 **69.** The Class Members were non-exempt employees entitled to overtime wages specified
26 and required by sections 510 and 1194 of the Labor Code.

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1 70. During the relevant time, Defendants required the Class Members to work more than
2 eight (8) hours in a day and forty (40) hours in a week, entitling them to overtime wages. They also
3 regularly worked more than twelve (12) hours in a day, thus entitling them to double-time wages.

4 71. However, Defendants did not pay the Class Members overtime and double-time wages
5 as the law required. Defendants failed to pay the Class Members overtime and double-time wages for
6 the off-the-clock work.

7 72. Thus, Defendants knowingly and willfully refused to perform their obligations and
8 compensate the Class Members for all overtime wages earned for all overtime hours worked.

9 73. Defendants' failure to pay the Class Members the unpaid balance of overtime
10 compensation, as required by California law, violates Labor Code sections 510, 1194, and 1198 and is
11 unlawful.

12 74. Thus, Loomis is entitled to recover, for herself and the Class Members, the unpaid balance
13 of unpaid overtime wages, interest, costs, and attorney's fees.

14 **Third Cause of Action: Failure to Provide Meal Periods**

15 **(By Loomis Against all Defendants)**

16 75. Loomis incorporates by reference and re-alleges the preceding allegations as if she stated
17 the allegations within this cause of action.

18 76. Under Labor Code section 226.7, no employer shall require an employee to work during
19 any meal period mandated by the IWC Wage Orders. Further, under Section 11 of the applicable IWC
20 Wage Order, "[n]o employer shall employ any person for a work period of more than five (5) hours
21 without a meal period of not less than 30 minutes, except that when a work period of not more than six
22 (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer
23 and the employee."

24 77. Also, under Labor Code section 512(a), an employer may not require, cause, or permit an
25 employee to work for more than five (5) hours per day without providing the employee with an
26 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per
27 day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent
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1 of both the employer and the employee. And, under Labor Code section 512(a), an employer may not
2 employ an employee for a work period of more than ten (10) hours per day without providing the
3 employee with a second meal period of not less than thirty (30) minutes, except that if the total hours
4 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of
5 the employer and the employee only if the first meal period was not waived.

6 **78.** Via the Policies, Procedures, and Practices, Defendants failed to relieve the Class
7 Members of all duties during meal periods, failed to permit them a reasonable opportunity to take meal
8 periods, failed to relinquish control over them during meal periods, and discouraged them from taking
9 meal periods.

10 **79.** In such circumstances, Labor Code section 226.7(b) and section 11 of the applicable IWC
11 Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee's
12 regular rate of compensation for each workday that the employer fails to provide a compliant meal
13 period.

14 **80.** However, Defendants failed to pay the Class Members meal period premiums for missed,
15 late, and short meal periods under Labor Code section 226.7(b) and section 11 of the applicable IWC
16 Wage Order.

17 **81.** Because Defendants failed to pay the Class Members a premium for each day, they failed
18 to provide compliant meal periods, Loomis and the Class Members are owed wages.

19 **Fourth Cause of Action: Failure to Permit or Authorize Rest Breaks**

20 **(By Loomis Against all Defendants)**

21 **82.** Loomis incorporates by reference and re-alleges the preceding allegations as if she stated
22 the allegations within this cause of action.

23 **83.** Under Labor Code section 226.7(a), no employer shall require an employee to work
24 during any rest period mandated by the IWC Wage Orders.

25 **84.** Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize
26 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
27 work period[,]” and the “[a]uthorized rest period time shall be based on the total hours worked daily at
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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 (3½) hours.

85. However, Defendants did not permit or authorize the Class Members to take a ten (10) minute rest period for every four (4) hours, or a major fraction thereof worked because, via the Policies, Procedures, and Practices, Defendants: (a) failed to relieve the Class Members of all duties for rest breaks; (b) failed to relinquish control over the Class Members and their activities to allow for rest breaks; (c) failed to permit the Class Members a reasonable opportunity to take uninterrupted breaks; and (d) discouraged the Class Members from taking rest breaks.

86. Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of compensation for each workday the employer fails to permit a compliant rest period.

87. However, Defendants failed to pay the Class Members rest break premiums for missed, late, and interrupted rest breaks under Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order.

88. Because Defendants failed to pay the Class Members a premium for each day, they failed to permit and authorize compliant meal periods, Plaintiff and the Class Members are owed wages.

Fifth Cause of Action: Failure to Reimburse Necessary Business Expenses

(By Loomis Against all Defendants)

89. Loomis incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

90. Under Labor Code sections 2800 and 2802, Defendants were required to reimburse Loomis for expenses incurred by him “in direct consequence of the discharge of [his] duties...”

91. However, via the Policies, Procedures, and Practices, Defendants failed to comply with the Labor Code. Defendants violated Labor Code sections 2800 and 2802 by failing to reimburse the Class Members for travel, and cellphone usage. The Class Members were not reimbursed for cellphone usage; and, they were paid for gas rather than mileage.

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1 **92.** The Class Members have been harmed by Defendants’ failure to reimburse necessary
2 business expenses.

3 **Sixth Cause of Action: Failure to Issue Accurate Wage Statements**

4 **(Against all Defendants)**

5 **93.** Loomis incorporates by reference and re-alleges the preceding allegations as if she stated
6 the allegations within this cause of action.

7 **94.** Labor Code section 226(a) requires Defendants to provide each employee with an
8 accurate wage statement in writing showing nine pieces of information, including the following: (1)
9 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
10 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
11 that all deductions made on written orders of the employee may be aggregated and shown as one item,
12 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
13 of the employee and the last four digits of his or her social security number or an employee identification
14 number other than a social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 **95.** However, Defendants knowingly and intentionally failed to comply with Labor Code
18 section 226(a) on Plaintiff’s wage statements. For example, the wage statements Defendants issued to
19 Plaintiff inaccurately stated: (a) the gross and net wages that she earned; and (b) the number of hours she
20 worked. These wage statements also omitted owed meal and rest premiums. They did the same with the
21 wage statements issued to the Class Members

22 **96.** Because of Defendants’ knowing and intentional failures to comply with Labor Code
23 section 226(a), Loomis and the Class Members have suffered injury and damage to their rights because,
24 as specified by Labor Code section 226(e), Defendants’ violations of section 226(a) were intentional,
25 e.g., they knowingly stated incorrect figures for hours worked, and gross and net wages, and knowingly
26 omitted premiums.

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1 **97.** Defendants denied the Class Members their legal right to receive, and their protected
2 interest in receiving, accurate itemized wage statements under Labor Code section 226(a).

3 **98.** Defendants prevented Loomis and the Class Members from determining if all hours
4 worked were paid at the appropriate rate. They were also prevented from determining the extent of the
5 underpayment.

6 **99.** But for Defendants' failures alleged here, Loomis and the Class Members would not have
7 had to engage in these efforts or incur costs. All of this could have been avoided if Defendants provided
8 the accurate hours worked, wages earned, and rates of pay.

9 **100.** Defendants' failures in this regard have also delayed Loomis's and the Class Members'
10 ability to recover the unpaid wages from Defendants.

11 **101.** Defendants' violations of section 226(a) prevented Loomis from knowing,
12 understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment
13 to Defendants. Because of Defendants' knowing and intentional failure to comply with Labor Code
14 section 226(a), Loomis has suffered an injury in the exact amount of damages and penalties to be shown
15 according to proof at trial.

16 **102.** Loomis is also entitled to injunctive relief under Labor Code section 226(h), compelling
17 Defendants to comply with Labor Code section 226.

18 **103.** Loomis is entitled to recover from Defendants the greater of all actual damages caused
19 by Defendants' failure to comply with Labor Code section 226(a) or fifty dollars (\$50.00) for the initial
20 pay period in which a violation occurred and one hundred dollars (\$100.00) per employee for each
21 violation in subsequent pay periods in an amount not exceeding four thousand dollars (\$4,000.00) per
22 employee, plus attorney's fees and costs—for herself and each Class Member.

23 **104.** Loomis also seeks attorney's fees and costs to the extent they were incurred in obtaining
24 this injunctive relief.

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Seventh Cause of Action: Failure to Pay All Wages Upon Separation of Employment

(By Loomis Against all Defendants)

105. Loomis incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

106. Under Labor Code sections 201 and 202, 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 voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours after that unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

107. Defendants willfully failed to pay Loomis all of her earned wages upon her resignation, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of them ending their employment with Defendants.

108. Further, on information and belief, Defendants did not pay the Class Members for vacation time wages they were owed upon the separation of their employment.

109. Defendants' failure to pay Loomis and the Class Members all earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ violates Labor Code sections 201 and 202.

110. Under Labor Code section 203, if an employer willfully fails to pay wages owed immediately upon discharge or resignation per Labor Code sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

111. Under Labor Code section 203, Loomis and the Class Members are entitled to recover from Defendants the statutory penalty, which is defined as Plaintiff's and the Class Members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

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Eighth Cause of Action: Violations of Business and Professions Code §§ 17200, et seq.

(By Loomis Against all Defendants)

112. Loomis incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

113. Business and Professions Code sections 17200, *et seq.*, prohibits unfair competition, including “unlawful, unfair or fraudulent business act or practice...” Notably, a violation of the statute can be based on a violation of any state or federal law.

114. Here, in the instant case, Defendants’ Policies, Procedures, and Practices violated state law, causing Plaintiff to suffer and continue to suffer injuries-in-fact, in the following ways: (a) failing to pay the Class Members all minimum wages and overtime wages for all work performed, and at the proper rate of pay, thus violating Labor Code sections 200 *et seq.*, 510, 1194, 1194.2, 1197 and 1198; (b) failing to provide meal periods without paying the Class Members premium wages for every day Defendants failed to provide the meal periods, thus violating Labor Code sections 226.7 and 512; (c) failing to authorize or permit rest breaks without paying the Class Members premium wages for every day Defendants failed to permit said rest breaks, thus violating Labor Code section 226.7; (d) failing to timely pay all earned wages to the Class Members during their employment, thus violating Labor Code sections 204 and 210; (e) failing to timely pay all earned wages to the Class Members upon separation of employment, thus violating Labor Code sections 201, 202 and 203; (f) failing to provide accurate, itemized wage statements to the Class Members, thus violating Labor Code section 226; and; (g) failing to maintain payroll records accurately stating the hours worked, and wages earned by the Class Members.

115. Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage statements, and failing to timely pay all wages due and owing upon separation of employment—to increase their profits.

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1 **116.** Defendants held themselves out to the Class Members as being knowledgeable
2 concerning California's labor and employment laws. Yet, they intentionally avoided paying the Class
3 Members wages and monies, thus lowering Defendants' business costs, and giving them a chance to
4 undercut the competition.

5 **117.** By violating the preceding statutes and regulations, Defendants engaged in unfair and
6 unlawful business practices under Business and Professions Code sections 17200, *et seq.*

7 **118.** Defendants' unfair and unlawful business practices entitle the Class Members to
8 injunctive relief, disgorgement, and restitution in an amount to be proven at trial.

9 **119.** Loomis seeks to enforce important rights affecting the public interest within the meaning
10 of the Code of Civil Procedure section 1021.5. Defendants' conduct has been and continues to be unfair,
11 unlawful, and harmful to Plaintiff, Plaintiff, and the general public. Thus, section 1021.5 of the Code of
12 Civil Procedure entitles Plaintiff to attorney's fees.

13 **Ninth Cause of Action: Enforcement of Private Attorneys General Act**

14 **Failure to Pay Minimum Wage**

15 **(By Betancourt Against all Defendants)**

16 **120.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
17 stated the allegations within this cause of action.

18 **121.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
19 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
20 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
21 action brought by an aggrieved employee on behalf of himself and other current or former employees
22 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
23 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
24 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
25 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
26 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

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1 **122.** Particularly, Defendants failed to pay the Aggrieved Employees minimum wages for all
2 work performed, thus violating Labor Code sections 200 to 204, 510, 1194, 1194.2, 1197, and 1198.

3 **123.** Defendants systematically engaged in unlawful conduct in violation of the California
4 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
5 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
6 statements, and failing to timely pay all wages due and owing upon separation of employment—to
7 increase their profits.

8 **124.** Betancourt is an “aggrieved employee” because Defendants employed him and because
9 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

10 **125.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
11 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
12 of the LWDA and the Aggrieved Employees.

13 **126.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
14 recover penalties against Defendants for violations of the Labor Code sections cited above.

15 **127.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
16 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
17 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

18 **128.** Betancourt is entitled to attorney’s fees and costs for bringing this action.
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20 **Tenth Cause of Action: Enforcement of Private Attorneys General Act**

21 **Failure to Pay Overtime Wages**

22 **(By Betancourt Against all Defendants)**

23 **129.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
24 stated the allegations within this cause of action.

25 **130.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
26 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
27 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself and other current or former employees

1 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
2 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
3 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
4 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
5 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

6 **131.** Particularly, Defendants failed to pay the Aggrieved Employees overtime wages for all
7 work performed, thus violating Labor Code sections 200 to 204, 510, 1194, 1194.2, 1197, and 1198.

8 **132.** Defendants systematically engaged in unlawful conduct in violation of the California
9 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
10 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
11 statements, and failing to timely pay all wages due and owing upon separation of employment—to
12 increase their profits.

13 **133.** Betancourt is an “aggrieved employee” because Defendants employed him and because
14 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

15 **134.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
16 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
17 of the LWDA and the Aggrieved Employees.

18 **135.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
19 recover penalties against Defendants for violations of the Labor Code sections cited above.

20 **136.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
21 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
22 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

23 **137.** Betancourt is entitled to attorney’s fees and costs for bringing this action.

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1 **Eleventh Cause of Action: Enforcement of Private Attorneys General Act**

2 **Failure to Provide Meal Periods**

3 **(By Betancourt Against all Defendants)**

4 **138.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
5 stated the allegations within this cause of action.

6 **139.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
7 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
8 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself and other current or former employees
10 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
11 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
12 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
13 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
14 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

15 **140.** Particularly, Defendants failed to provide meal periods without paying the Aggrieved
16 Employees premium wages for every day Defendants failed to provide the meal periods, thus violating
17 Labor Code sections 226.7 and 512.

18 **141.** Defendants systematically engaged in unlawful conduct in violation of the California
19 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
20 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
21 statements, and failing to timely pay all wages due and owing upon separation of employment—to
22 increase their profits.

23 **142.** Betancourt is an “aggrieved employee” because Defendants employed him and because
24 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

25 **143.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
26 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
27 of the LWDA and the Aggrieved Employees.
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1 **144.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
2 recover penalties against Defendants for violations of the Labor Code sections cited above.

3 **145.** Defendants' conduct has been and continues to be unfair, unlawful, and harmful to
4 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
5 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

6 **146.** Betancourt is entitled to attorney's fees and costs for bringing this action.

7 **Twelfth Cause of Action: Enforcement of Private Attorneys General Act**

8 **Failure to Permit and Authorize Rest Breaks**

9 **(By Betancourt Against all Defendants)**

10 **147.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
11 stated the allegations within this cause of action.

12 **148.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
13 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
14 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
15 action brought by an aggrieved employee on behalf of himself and other current or former employees
16 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
17 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
18 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
19 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
20 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

21 **149.** Particularly, Defendants failed to authorize or permit rest breaks without paying the
22 Aggrieved Employees premium wages for every day Defendants failed to permit said rest breaks, thus
23 violating Labor Code section 226.7

24 **150.** Defendants systematically engaged in unlawful conduct in violation of the California
25 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
26 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
27 statements, and failing to timely pay all wages due and owing upon separation of employment—to
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1 increase their profits.

2 **151.** Betancourt is an “aggrieved employee” because Defendants employed him and because
3 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

4 **152.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
5 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
6 of the LWDA and the Aggrieved Employees.

7 **153.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
8 recover penalties against Defendants for violations of the Labor Code sections cited above.

9 **154.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
10 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
11 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

12 **155.** Betancourt is entitled to attorney’s fees and costs for bringing this action.

13 **Thirteenth Cause of Action: Enforcement of Private Attorneys General Act**

14 **Failure to Timely Pay All Wages During Employment**

15 **(By Betancourt Against all Defendants)**

16 **156.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
17 stated the allegations within this cause of action.

18 **157.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
19 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
20 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
21 action brought by an aggrieved employee on behalf of himself and other current or former employees
22 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
23 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
24 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
25 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
26 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

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1 **158.** Particularly, Defendants failed timely pay all earned wages to the Aggrieved Employees
2 during their employment, thus violating Labor Code sections 204 and 210.

3 **159.** Defendants systematically engaged in unlawful conduct in violation of the California
4 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
5 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
6 statements, and failing to timely pay all wages due and owing upon separation of employment—to
7 increase their profits.

8 **160.** Betancourt is an “aggrieved employee” because Defendants employed him and because
9 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

10 **161.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
11 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
12 of the LWDA and the Aggrieved Employees.

13 **162.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
14 recover penalties against Defendants for violations of the Labor Code sections cited above.

15 **163.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
16 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
17 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

18 **164.** Betancourt is entitled to attorney’s fees and costs for bringing this action.
19

20 **Fourteenth Cause of Action: Enforcement of Private Attorneys General Act**

21 **Failure to Timely Pay All Wages Upon Separation of Employment**

22 **(By Betancourt Against all Defendants)**

23 **165.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
24 stated the allegations within this cause of action.

25 **166.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
26 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
27 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself and other current or former employees

1 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
2 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
3 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
4 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
5 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

6 **167.** Particularly, Defendants failed timely pay all earned wages to the Aggrieved Employees
7 upon separation of employment, thus violating Labor Code sections 201, 202, and 203.

8 **168.** Defendants systematically engaged in unlawful conduct in violation of the California
9 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
10 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
11 statements, and failing to timely pay all wages due and owing upon separation of employment—to
12 increase their profits.

13 **169.** Betancourt is an “aggrieved employee” because Defendants employed him and because
14 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

15 **170.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
16 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
17 of the LWDA and the Aggrieved Employees.

18 **171.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
19 recover penalties against Defendants for violations of the Labor Code sections cited above.

20 **172.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
21 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
22 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

23 **173.** Betancourt is entitled to attorney’s fees and costs for bringing this action.

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1 **Fifteenth Cause of Action: Enforcement of Private Attorneys General Act**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **(By Betancourt Against all Defendants)**

4 174. Betancourt incorporates by reference and re-alleges the preceding allegations as if he
5 stated the allegations within this cause of action.

6 175. Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
7 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
8 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself and other current or former employees
10 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
11 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
12 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
13 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
14 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

15 176. Particularly, Defendants failed to provide accurate, itemized wage statements to the
16 Aggrieved Employees, thus violating Labor Code sections 226 and 226.3.

17 177. Defendants systematically engaged in unlawful conduct in violation of the California
18 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
19 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
20 statements, and failing to timely pay all wages due and owing upon separation of employment—to
21 increase their profits.

22 178. Betancourt is an “aggrieved employee” because Defendants employed him and because
23 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

24 179. Further, Betancourt timely exhausted the procedural requirements of PAGA (under
25 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
26 of the LWDA and the Aggrieved Employees.

27 180. Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
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1 recover penalties against Defendants for violations of the Labor Code sections cited above.

2 **181.** Defendants' conduct has been and continues to be unfair, unlawful, and harmful to
3 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
4 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

5 **182.** Betancourt is entitled to attorney's fees and costs for bringing this action.

6 **Sixteenth Cause of Action: Enforcement of Private Attorneys General Act**

7 **Failure to Maintain Payroll Records**

8 **(By Betancourt Against all Defendants)**

9 **183.** Betancourt incorporates by reference and re-alleges the preceding allegations as if he
10 stated the allegations within this cause of action.

11 **184.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
12 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
13 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of himself and other current or former employees
15 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
16 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
17 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
18 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
19 each subsequent pay period in which Defendants violated these provisions of the Labor Code.
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21 **185.** Particularly, Defendants failed to maintain payroll records accurately stating the hours
22 worked, and wages earned by the Aggrieved Employees, thus violating Labor Code sections 1174 and
23 1174.5.

24 **186.** Defendants systematically engaged in unlawful conduct in violation of the California
25 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
26 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
27 statements, and failing to timely pay all wages due and owing upon separation of employment—to
28 increase their profits.

1 187. Betancourt is an “aggrieved employee” because Defendants employed him and because
2 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

3 188. Further, Betancourt timely exhausted the procedural requirements of PAGA (under
4 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
5 of the LWDA and the Aggrieved Employees.

6 189. Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
7 recover penalties against Defendants for violations of the Labor Code sections cited above.

8 190. Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
9 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
10 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

11 191. Betancourt is entitled to attorney’s fees and costs for bringing this action.

12 **Seventeenth Cause of Action: Enforcement of Private Attorneys General Act**

13 **Failure to Reimburse Necessary Business Expenses**

14 **(By Betancourt Against all Defendants)**

15 192. Betancourt incorporates by reference and re-alleges the preceding allegations as if he
16 stated the allegations within this cause of action.

17 193. Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
18 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
19 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
20 action brought by an aggrieved employee on behalf of himself and other current or former employees
21 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
22 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
23 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
24 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
25 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

26 194. Particularly, Defendants failed to reimburse necessary business expenses incurred by the
27 Aggrieved Employees, thus violating Labor Code sections 2800 and 2802.
28

1 **195.** Defendants systematically engaged in unlawful conduct in violation of the California
2 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
3 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
4 statements, and failing to timely pay all wages due and owing upon separation of employment—to
5 increase their profits.

6 **196.** Betancourt is an “aggrieved employee” because Defendants employed him and because
7 Betancourt suffered multiple violations of the Labor Code while working for Defendants.

8 **197.** Further, Betancourt timely exhausted the procedural requirements of PAGA (under
9 section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf
10 of the LWDA and the Aggrieved Employees.

11 **198.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
12 recover penalties against Defendants for violations of the Labor Code sections cited above.

13 **199.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to
14 Plaintiffs and the general public. Betancourt, therefore, seeks to enforce important rights affecting the
15 public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

16 **200.** Betancourt is entitled to attorney’s fees and costs for bringing this action.

17
18 **PRAYER FOR RELIEF**

19 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

20 **201.** compensatory damages in an amount according to proof at trial;

21 **202.** an order certifying the Class and Waiting Time Subclass;

22 **203.** an order appointing Plaintiff as the representative for the Class and Waiting Time
23 Subclass;

24 **204.** an order appointing Gonzalez Weerasuriya, APC, counsel for the Class and Waiting Time
25 Subclass;

26 **205.** statutory and civil penalties;

27 **206.** punitive damages;

28 **207.** injunctive relief;

1 **208.** restitution under Business and Professions Code sections 17200, *et seq.*;

2 **209.** pre-judgment interest; and reasonable attorney's fees, costs of suit, and interest to the
3 extent permitted by law, including, but not limited to Labor Code sections 226(e), 1194 and 2698, *et*
4 *seq.*; and

5 **210.** other relief as the Court deems proper.

6 **PRAYER FOR JURY TRIAL**

7 **211.** Plaintiff prays for a trial by jury on all triable claims.

8
9 Dated May 19, 2023

GONZALEZ WEERASURIYA, APC

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12 _____
13 Suren N. Weerasuriya
14 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2 I declare that I am employed in Orange County, California. I am over the age of 18 years. The
3 name and address of my business is Gonzalez Weerasuriya, APC; 206 W. 4th Street, Suite 340, Santa
4 Ana, California 92701.

5 On May 19, 2023, I served **FIRST AMENDED COMPLAINT** on the parties listed below by
6 electronically serving the documents in full compliance with the California Rules of Court and sections
7 1010.6(a)(2)(A)(ii) and (e)(1) the Code of Civil Procedure, pursuant to a court order requiring e-service
8 of all documents in this case.

9
10 **Kerri N. Kramer**
11 **KRING & CHUNG, LLP**
12 38 Corporate Park
13 Irvine, CA 92606
14 Telephone: (949) 261-7700
15 Facsimile: (949) 261-8800
16 kkramer@kringandchung.com

17 Executed on May 19, 2023, in Irvine, California, by _____

18 Diana Ortiz
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