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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

STEV BETANCOURT, an individual,

Plaintiffs,

vs.

ONORIA HEALTHCARE PROVIDER, INC.; a
California Corporation; SANTE HOME
HEALTH, INC., a California Corporation; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 30-2021-01217963-CU-OE-CJC

Assigned to Honorable Deborah Servino
Dept: C21

**FIRST AMENDED COMPLAINT FOR
COMPENSATORY AND PUNITIVE
DAMAGES, EQUITABLE AND
INJUNCTIVE RELIEF; AND CIVIL AND
STATUTORY PENALTIES**

1 Plaintiff Stev Betancourt alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings individual claims against Defendants Onoria Healthcare Provider, Inc.
4 (“Onoria”) and Sante Home Health, Inc. (“Sante”) (collectively, “Defendants”) for unpaid wages,
5 statutory penalties, attorney’s fees, costs, and interest, due to Defendants’ violations of the Labor Code.

6 2. Plaintiff also brings claims under the Private Attorneys General Act (“PAGA”) for civil
7 penalties, on behalf of himself and all other individuals that have been employed by Defendants as non-
8 exempt traveling nurse employees within the year preceding the filing of the original Complaint in this
9 case (collectively, “the Aggrieved Employees”).

10 3. Defendants jointly controlled/control and governed/govern the Aggrieved Employees’
11 employment terms and conditions, including their wages, hours, and general working conditions, via the
12 same policies, procedures, and practices (the “Policies, Procedures, and Practices”).

13 4. Through the Policies, Procedures, and Practices, Defendants systematically violated the
14 Aggrieved Employees’ rights under the Labor Code.

15 **THE PARTIES**

16 5. Plaintiff resides in Orange County. He worked for Defendants in the same county.

17 6. Defendants are California corporations doing business in California, including Orange
18 County. They employed Plaintiff in Orange County, California.

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

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

24 9. Plaintiff is informed and believes that every Defendant acted as the other Defendant’s
25 agent or joint employer and conducted a joint scheme, business plan, or policy accordingly. Thus, the
26 acts of each Defendant are legally attributable to the other defendant.
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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 Orange, is the proper venue for this action because the acts giving rise to Plaintiff's claims occurred substantially in Orange County, California.

JURISDICTION

13. The Superior Court of California, County of Orange has personal jurisdiction over Defendants because they personally availed themselves of the laws of the State of California and had minimum contacts 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. Plaintiff worked for Defendants from July of 2018 to April 4, 2021.

15. Defendants paid the Aggrieved Employees hourly wages. Plaintiff's final regular rate of pay was \$35 per hour.

16. Plaintiff regularly worked twelve (12) or more hours a shift, five (5) to seven (7) days a week, for Defendants. Consequently, Defendants regularly owed Plaintiff at least the following, for these shifts: (a) three paid, uninterrupted, duty-free, 10-minute rest breaks; and (b) two, uninterrupted, duty-free, 30-minute unpaid meal periods. Plaintiff is informed and believes the rest of Aggrieved Employees regularly worked such hours, and thus, were daily entitled to at least the same number of rest breaks and meal periods as Plaintiff

17. Further, Defendants regularly owed Plaintiff overtime wages for all work performed more than eight hours a day or 40 hours a week; and for the first eight hours of the seventh shift in a row that Plaintiff worked. Defendants also owed Plaintiff double-time wages for all hours exceeding 12 hours in a shift and all hours exceeding 8 hours on the seventh shift in a row. Plaintiff is informed and believes

1 the rest of Aggrieved Employees regularly worked such hours, and thus, were regularly entitled to
2 overtime and double-time wages.

3 **18.** Plaintiff's daily duties (the "Duties") were to: (a) review his list of patients (provided by
4 the Defendants) and communicate with the patients to schedule daily visits; (b) travel to the patient's
5 homes while transporting various medical supplies provided by the Defendants that Defendants required
6 Plaintiff and all other traveling nurses to transport with them when they traveled to patients' homes,
7 using their cellphones or other GPS devices to determine travel locations and routes; (c) physically care
8 for the patients—which Defendants expected would take Plaintiff and other traveling nurses no more
9 than one (1) hour per patient, including travel time to and from a patient's home—between 8:30 a.m.
10 and 5:30 p.m.; (d) communicate with patients and Defendants, using his cellphone, whenever they
11 contacted him; and (e) prepare and log the necessary medical charts for patients. Plaintiff is informed
12 and believes that the other Aggrieved Employees were also required to perform the Duties.

13 **19.** A failure to perform the Duties would have resulted in Plaintiff's termination; and, on
14 information and belief, the termination of the other Aggrieved Employees. This much is clear from
15 Defendants' handbook, which expressly states that "[g]ross negligence of patient care" and "[r]efusal to
16 perform assigned work" are grounds for discipline. A failure to prepare and log patients' charts or a
17 failure to transport the provided supplies would constitute these two grounds for discipline. Thus, to
18 avoid such consequences, Plaintiff, and, on information and belief, the other Aggrieved Employees,
19 prioritized completing the Duties. However, doing so caused Plaintiff to go unpaid approximately 44
20 hours a week because, under Defendant's compensation plan (the "Plan"), he was only paid for 40 hours
21 of work a week. Plaintiff is informed and believes that Defendants paid the other Aggrieved Employees
22 under the same Plan or a substantially similar one. Thus, Plaintiff is informed and believes that
23 Defendants also regularly failed to pay the other Aggrieved Employees for all hours they worked for
24 Defendants.
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26 **20.** Under the Plan, Defendants only paid the Aggrieved Employees for eight (8) hours a day
27 to care for at least seven (7) patients a day—regardless of how much time they spent traveling, preparing
28 and logging the patients' charts, and scheduling their visits with patients. Thus, to comply with the Duties

1 and avoid disciplinary action, Plaintiff, and, on information and belief, the other Aggrieved Employees,
2 performed 84 hours of work weekly, while only being paid for 40 hours of weekly work.

3 **21.** Defendants knew that the Aggrieved Employees worked more than 40 hours a week
4 without pay for the work above 40 hours because: (a) the Aggrieved Employees provided Defendants a
5 daily log of all patient visits, including the start and end times of the visits and mileage; and (b) to comply
6 with the Duties, the Aggrieved Employees would have to prepare and log charts and set up visits, all of
7 which were necessary to perform the visits, but none of which could have been performed during patient
8 visits. In short, the Aggrieved Employees had to perform many tasks necessary to provide the proper
9 care for patients, and Defendants expected them not to perform those tasks while visiting the patients,
10 so they necessarily had to perform those tasks “off-the-clock.”

11 **22.** The Aggrieved Employees were entitled to compensation for travel time and
12 administrative time. However, under the Plan, Defendants knowingly did not pay the Aggrieved
13 Employees for travel time or administrative time. Thus, Defendants are liable for failure to pay minimum
14 wage and overtime wages for the travel time and administrative time.

15 **23.** Defendants’ policies only entitled the Aggrieved Employees working eight-hour shifts to
16 meal periods. But the Labor Code required Defendants to provide a meal period for any employee that
17 worked more than five hours in a shift and rest breaks for any employee that worked at least three and
18 one-half hours a shift. Also, the policies were silent on the timing of the meal periods, even though the
19 Labor Code is clear about the requirement, *e.g.*, the first meal period must be taken before the start of
20 the sixth hour of employment. In other words, because Defendants’ meal period policies and procedures
21 were facially invalid, Defendants failed to provide the Aggrieved Employees meal periods.

22 **24.** Further, the Aggrieved Employees could not take timely duty-free meal periods because
23 they did not have enough time in a day to comply with the Duties and take compliant meal periods.
24 Typically, the pressure exerted on the Aggrieved Employees from having to conduct all in-home visits
25 between 8:30 a.m. and 5:00 p.m. and the delays caused by travel (namely, traffic) forced the Aggrieved
26 Employees to often take “meal periods” while driving to patients’ homes. The Aggrieved Employees
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1 were also regularly interrupted during meal periods by patient phone calls that Defendants required the
2 Aggrieved Employees to answer.

3 **25.** The acts and omissions alleged from paragraphs 23 and 24 above reflect a failure by
4 Defendants to provide duty-free meal periods; a failure to relinquish control over the Aggrieved
5 Employees during meal periods; a failure to provide the Aggrieved Employees with a reasonable
6 opportunity to take uninterrupted 30-minute meal periods; and the impediment and discouragement of
7 meal periods.

8 **26.** Further, Defendants only entitled employees working eight-hour shifts to rest breaks. But
9 the Labor Code required Defendants to provide a rest break for any employee that worked at least a three
10 and one-half-hour shift. Also, as described above, compliance with the Duties made it difficult for the
11 Aggrieved Employees to take rest breaks. They did not have enough time in an eight-hour shift to
12 perform all the Duties and take compliant rest breaks.

13 **27.** The Aggrieved Employees were entitled to receive accurate itemized wage statements
14 accurately stating their compensation details, (e.g., hours worked, gross and net wages earned, etc.). But
15 Defendants failed to issue accurate itemized wage statements. They regularly issued the Aggrieved
16 Employees wage statements inaccurately stating the “hours worked” and “wages earned” by the
17 Aggrieved Employees, i.e., by omitting the “off-the-clock” hours (for travel and administrative time)
18 and owed wages resulting from such work. Also, the wage statements omitted premiums owed to the
19 Aggrieved Employees for meal period and rest break violations. Thus, Defendants are liable for failure
20 to provide accurate itemized wage statements.

21 **28.** The Aggrieved Employees were entitled to be reimbursed for necessary business
22 expenses. The Aggrieved Employees were regularly required to use their cellphone and GPS software
23 on the cellphone to track time and mileage and to obtain directions to patients’ homes. Thus, they were
24 entitled to receive reimbursement for these expenses. But Defendants failed to reimburse the Aggrieved
25 Employees for these expenses. Thus, Defendants are liable for failure to reimburse necessary business
26 expenses.

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29. On April 4, 2021, Plaintiff gave notice of his intention to leave Defendant's company. Although Plaintiff eventually received his final wages, the wages did not include the unpaid overtime and minimum wages for the off-the-clock work, unpaid premiums for meal and rest break violations, and the unreimbursed business expenses. Thus, Plaintiff is informed and believes Defendants regularly failed to pay the other Aggrieved Employees all wages owed to them, upon their separation of employment from Defendants.

30. Plaintiff is informed and believes that Defendants knew or should have known they had a duty to compensate the Aggrieved Employees. Defendants had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed to meet their obligations.

CAUSES OF ACTION

First Cause of Action: Failure to Pay the Minimum Wage

(Against all Defendants)

31. Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated the allegations within this cause of action.

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

33. Defendants paid Plaintiff less than the minimum wage when they failed to pay Plaintiff for the work he performed off-the-clock.

34. Thus, during the relevant time, Defendants regularly failed to pay at least minimum wage to Plaintiff for all hours worked under Labor Code sections 1194 and 1197 and 1182.12.

35. Defendants' failure to pay Plaintiff the required minimum wage violates Labor Code sections 1194, 1194.2, 1197, and 1182.12 of the Labor Code and section four of the applicable Wage Order.

36. Thus, Plaintiff is entitled to recover the unpaid balance of his minimum wage compensation and interest, costs, and attorney's fees. Further, under Labor Code section 1194.2, Plaintiff

1 is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the
2 accrued interest.

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

4 **(Against all Defendants)**

5 37. Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated
6 the allegations within this cause of action.

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

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

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

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

24 42. Plaintiff was a non-exempt employee entitled to overtime wages specified and required
25 by sections 510 and 1194 of the Labor Code.

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

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

6 45. Thus, Defendants knowingly and willfully refused to perform their obligations and
7 compensate Plaintiff for all overtime wages earned for all overtime hours worked.

8 46. Defendants' failure to pay Plaintiff the unpaid balance of overtime compensation, as
9 required by California law, violates Labor Code sections 510, 1194, and 1198 and is unlawful.

10 47. Thus, Plaintiff is entitled to recover the unpaid balance of his overtime wages, interest,
11 costs, and attorney's fees.

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

13 **(Against all Defendants)**

14 48. Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated
15 the allegations within this cause of action.

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

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

4 **51.** Via the Policies, Procedures, and Practices, Defendants failed to relieve Plaintiff of all
5 duties during meal periods, failed to permit him a reasonable opportunity to take meal periods, failed to
6 relinquish control over him during meal periods, and discouraged him from taking meal periods.

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

11 **53.** However, Defendants failed to pay Plaintiff meal period premiums for missed, late, and
12 short meal periods under Labor Code section 226.7(b) and section 11 of the applicable IWC Wage Order.

13 **54.** Because Defendants failed to pay Plaintiff a premium for each day, they failed to provide
14 compliant meal periods, Plaintiff has been deprived of earned wages.

15 **Fourth Cause of Action: Failure to Permit or Authorize Rest Breaks**
16 **(Against all Defendants)**

17 **55.** Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated
18 the allegations within this cause of action.

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

21 **57.** Section 12 of the applicable IWC Wage Order states "[e]very employer shall authorize
22 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
23 work period[,]" and the "[a]uthorized rest period time shall be based on the total hours worked daily at
24 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof[,]" unless the total
25 daily work time is less than three and one-half (3½) hours.

26 **58.** However, Defendants did not permit or authorize Plaintiff to take a ten (10) minute rest
27 period for every four (4) hours, or major fraction thereof worked because, via the Policies, Procedures,
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1 and Practices, Defendants: (a) failed to relieve Plaintiff of all duties for rest breaks; (b) failed to
2 relinquish control over Plaintiff and Plaintiff's activities to allow for rest breaks; (c) failed to permit
3 Plaintiff a reasonable opportunity to take uninterrupted breaks; and (d) most importantly, discouraged
4 Plaintiff from taking rest breaks.

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

8 **60.** However, Defendants failed to pay Plaintiff's rest break premiums for missed, late, and
9 interrupted rest breaks under Labor Code section 226.7(b) and section 12 of the applicable IWC Wage
10 Order.

11 **61.** Because Defendants failed to pay Plaintiff a premium for each day that they failed to
12 provide compliant rest breaks, Plaintiff has been deprived of earned wages.

13 **Fifth Cause of Action: Failure to Reimburse Necessary Business Expenses**

14 **(Against all Defendants)**

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

17 **63.** Under Labor Code sections 2800 and 2802, Defendants were required to reimburse
18 Plaintiff for expenses incurred by him "in direct consequence of the discharge of [his] duties..."

19 **64.** However, via the Policies, Procedures, and Practices, Defendants failed to comply with
20 the Labor Code. Defendants violated Labor Code sections 2800 and 2802 by failing to reimburse Plaintiff
21 for the expenses he incurred while using his cellphone to perform the Duties.

22 **65.** Plaintiff has been harmed by Defendants' failure to reimburse necessary business
23 expenses.

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

25 **(Against all Defendants)**

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

11 **68.** However, Defendants knowingly and intentionally failed to comply with Labor Code
12 section 226(a) on Plaintiff's wage statements. For example, the wage statements Defendants issued to
13 Plaintiff inaccurately stated: (a) the gross and net wages that he earned; and (b) the number of hours he
14 worked. These wage statements also omitted owed meal and rest premiums.

15 **69.** Because of Defendants' knowing and intentional failures to comply with Labor Code
16 section 226(a), Plaintiff has suffered injury and damage to his rights because, as specified by Labor Code
17 section 226(e), Defendants' violations of section 226(a) were intentional, e.g., they knowingly stated
18 incorrect figures for hours worked, and gross and net wages, and knowingly omitted premiums.

19 **70.** Defendants denied Plaintiff his legal right to receive, and his protected interest in
20 receiving, accurate itemized wage statements under Labor Code section 226(a).

21 **71.** Also, because Defendants failed to state accurate rates of pay on wage statements,
22 Defendants prevented Plaintiff from determining if all hours he worked were paid at the appropriate rate.
23 He was also prevented from determining the extent of the underpayment.

24 **72.** But for Defendants' failures alleged here, Plaintiffs would not have had to engage in these
25 efforts or incur costs. All of this could have been avoided if Defendants provided the accurate hours
26 worked, wages earned, and rates of pay.

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73. Defendants' failures in this regard have also delayed Plaintiff's ability to recover the unpaid wages from Defendants.

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

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

76. Plaintiff is also entitled to injunctive relief under Labor Code section 226(h), compelling Defendants to comply with Labor Code section 226.

77. Plaintiff also seeks attorney's fees and costs to the extent they were incurred in obtaining this injunctive relief.

Seventh Cause of Action: Failure to Pay All Wages Upon Separation of Employment
(Against all Defendants)

78. Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated the allegations within this cause of action.

79. 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 that 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.

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1 breaks, thus violating Labor Code section 226.7; (d) failing to timely pay all earned wages to Plaintiff
2 during their employment, thus violating Labor Code sections 204 and 210; (e) failing to timely pay all
3 earned wages to the Waiting Time Plaintiff upon separation of employment, thus violating Labor Code
4 sections 201, 202 and 203; (f) failing to provide accurate, itemized wage statements to Plaintiff, thus
5 violating Labor Code section 226; and; (g) failing to maintain payroll records accurately stating the hours
6 worked, and wages earned by Plaintiff.

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

12 **88.** Defendants held themselves out to Plaintiff as being knowledgeable concerning
13 California's labor and employment laws. Yet, they intentionally avoided paying Plaintiff wages and
14 monies, thus lowering Defendants' business costs and giving them a chance to undercut the competition.

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

17 **90.** Defendants' unfair and unlawful business practices entitle Plaintiff to injunctive relief,
18 disgorgement, and restitution in an amount to be proven at trial.

19 **91.** Plaintiff seeks to enforce important rights affecting the public interest within the meaning
20 of Code of Civil Procedure section 1021.5. Defendants' conduct has been and continues to be unfair,
21 unlawful, and harmful to Plaintiffs, Plaintiff, and the general public. Thus, section 1021.5 of the Code
22 of Civil Procedure entitles Plaintiff to attorney's fees.

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

24 **(Against all Defendants)**

25 **92.** Plaintiff incorporates by reference and re-alleges the preceding allegations as if he stated
26 the allegations within this cause of action.

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

10 **94.** Here, through the Policies, Procedures, and Practices, Defendants violated the following
11 Labor Code sections: 201-203, 204, 210, 212, 225.5, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
12 1174.5, 1118.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

13 **95.** Particularly, Defendants: (a) failed to pay the Aggrieved Employees minimum wages and
14 overtime wages for all work performed, thus violating Labor Code sections 200 *et seq.*, 510, 1194,
15 1194.2, 1197 and 1198; (b) failed provide meal periods without paying the Aggrieved Employees
16 premium wages for every day Defendants failed to provide the meal periods, thus violating Labor Code
17 sections 226.7 and 512; (c) failed authorize or permit rest breaks without paying the Aggrieved
18 Employees premium wages for every day Defendants failed to permit said rest breaks, thus violating
19 Labor Code section 226.7; (d) failed timely pay all earned wages to the Aggrieved Employees during
20 their employment, thus violating Labor Code sections 204 and 210; (e) failed timely pay all earned wages
21 to the Aggrieved Employees upon separation of employment, thus violating Labor Code sections 201,
22 202 and 203; (f) failed provide accurate, itemized wage statements to the Aggrieved Employees, thus
23 violating Labor Code section 226 and 226.3; (g) failed to maintain payroll records accurately stating the
24 hours worked, and wages earned by the Aggrieved Employees, thus violating Labor Code sections 1174
25 and 1174.5; and (h) failed to reimburse necessary business expenses incurred by the Aggrieved
26 Employees, thus violating Labor Code sections 2800 and 2802.

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96. 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.

97. Plaintiff is an “aggrieved employee” because Defendants employed him and because Plaintiff suffered multiple violations of the Labor Code while working for Defendants. Further, Plaintiff timely exhausted the procedural requirements of PAGA (under section 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf of the LWDA and the Aggrieved Employees.

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

99. Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiffs and the general public. Plaintiffs, therefore, seek to enforce important rights affecting the public interest within the meaning of section 1021.5 of the Code of Civil Procedure.

100. Plaintiff is entitled to attorney's fees and costs for bringing this action.

PRAYER FOR RELIEF

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

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

102. statutory and civil penalties to the extent permitted by law, including, under PAGA;

103. punitive damages;

104. injunctive relief;

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

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

107. other relief as the Court deems proper.

PRAYER FOR JURY TRIAL

108. Plaintiff prays for a trial by jury on all triable claims.

Dated October 14, 2021

GONZALEZ WEERASURIYA, APC



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