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Attorneys for Plaintiff ANA MARIA FLORES
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ANA MARIA FLORES, on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

MARINER HEALTH CENTRAL, INC.; PALM
SPRINGS OPERATING COMPANY, LP; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **CVPS2104890**

PAGA ACTION

**PLAINTIFF ANA MARIA FLORES'
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff ANA MARIA FLORES (Plaintiff), who alleges and complains
against Defendants MARINER HEALTH CENTRAL, INC.; PALM SPRINGS OPERATING
COMPANY, LP; and DOES 1 to 100, inclusive (collectively, E ! s follows:

I. INTRODUCTION

1. This is a Private B General Act of 2004, Lab. Code § 2698, et seq.
) BHB representative action brought by Plaintiff on behalf of the State of California, herself,
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees, in California during the relevant time period seeking civil penalties associated
!E ! s of the Labor Code for failure to pay wages for all hours worked at the

1 minimum wage rate, failure to pay overtime wages for overtime hours worked at employees
2 overtime rate, failure to provide all legally required and/or legally compliant meal periods and/or
3 pay meal period premium wages, failure to provide all legally required and/or legally compliant
4 rest periods and/or pay rest period premium wages, failure to pay all accrued and vested vacation
5 and/or paid time off (PTO) wages, failure to timely pay earned wages during employment,
6 failure to provide complete and accurate wage statements, and failure to timely pay all unpaid
7 wages following separation of employment. Plaintiff seeks on a representative basis, following
8 notice to the Labor and Workforce Development Agency, civil penalties, ! !
9 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
10 of California, and other current and former aggrieved hourly non-exempt employees in California.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over Plaintiff s and other current and former aggrieved
13 hourly non-exempt California-based employee s claims because Plaintiff's lawsuit seeks damages
14 in excess of \$25,000 and Defendants employed the aggrieved employees in California including,
15 but not limited to, Riverside County at 277 S. Sunrise Way, Palm Springs, California 92262 and
16 injuries occurred in locations in California including, but not limited to, Riverside County at 277
17 S. Sunrise Way, Palm Springs, California 92262.

18 **III. PARTIES**

19 3. Plaintiff brings this action as a representative of the Labor and Workforce
20 Development Agency on behalf of herself, the State of California, and other current and former
21 aggrieved employees who were subject to Defendants violations of the Labor Code. The named
22 Plaintiff and the persons on whose behalf this action is filed include current, former and/or future
23 employees of Defendants who worked, work, or will work for Defendants as non-exempt hourly
24 employees in California. At all times mentioned herein, the currently named Plaintiff is and was
25 domiciled and a resident and citizen of California and was employed by Defendants in an hourly
26 position at Defendants location in Palm Springs, California from approximately May 19, 2019,
27 until her termination on or about March 21, 2021.

28 4. Plaintiff is informed and believes and thereon alleges that Defendant MARINER

1 HEALTH CENTRAL, INC. is authorized to do business within the State of California and is
2 doing business in the State of California and/or that Defendants DOES 1-25 are, and at all times
3 relevant hereto were persons acting on behalf of Defendant MARINER HEALTH CENTRAL,
4 INC. in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
5 or policies. Defendant MARINER HEALTH CENTRAL, INC. operates in Riverside County and
6 employed Plaintiff and other current and former aggrieved hourly non-exempt employees in
7 Riverside County, including but not limited to, at 277 S. Sunrise Way, Palm Springs, California
8 92262.

9 5. Plaintiff is informed and believes and thereon alleges that Defendant PALM
10 SPRINGS OPERATING COMPANY, LP is authorized to do business within the State of
11 California and is doing business in the State of California and/or that Defendants DOES 26-50 are,
12 and at all times relevant hereto were persons acting on behalf of Defendant PALM SPRINGS
13 OPERATING COMPANY, LP in the establishment of, or ratification of, the aforementioned
14 illegal wage and hour practices or policies. Defendant PALM SPRINGS OPERATING
15 COMPANY, LP operates in Riverside County and employed Plaintiff and other current and
16 former aggrieved hourly non-exempt employees in Riverside County, including but not limited to,
17 at 277 S. Sunrise Way, Palm Springs, California 92262.

18 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
19 through 50 are corporations, or are other business entities or organizations of a nature unknown to
20 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
21 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
22 working conditions of employment of Plaintiff and aggrieved employees.

23 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
24 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
25 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
26 supervisor, independent contractor and/or employee of each defendant who violated or caused to
27 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
28 the Industrial !D ! ! ! hours and days of work.

1 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
2 sues said defendants by said fictitious names, and will amend this complaint when the true names
3 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
4 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
5 named defendants is in some manner responsible for the events and allegations set forth in this
6 complaint.

7 9. Plaintiff makes the allegations in this complaint without any admission that, as to
8 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
9 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

12 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

13 **(Against all Defendants)**

14 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 11. During the period beginning one-year period preceding the sending of the initial
16 notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204,
17 226, 226.7, 227.3, 510, 512, 1194, 1197, 1198, and the applicable Wage Orders.

18 12. Specifically, Defendants have committed the following violations of California
19 Labor Code:

20 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
21 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
22 employees. In California, an employer is required to pay hourly employees for al ! ! - !
23 which includes all time that an employee is under control of the employer and all time the
24 employee is suffered and permitted to work. This includes the time an employee spends, either
25 directly or indirectly, performing services which inure to the benefit of the employer.

26 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
27 ! ! ! ! ! ! ! ! nimum wage rate of pay as established by the IWC and the
28 Wage Orders.

1 15. In this case, Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
3 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
4 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
5 wage for all hours worked due to Defendants policies, practices, and/or procedures including, but
6 not limited to, requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees to undergo off-the-clock COVID-19 temperature checks, medical
8 questionnaires, and/or personal medical assessments prior to being permitted to clock in for their
9 shifts.

10 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
11 and former aggrieved California-based hourly non-exempt employees to be subject to Defendant
12 control without paying wages for that time. This resulted in Plaintiff and other current and former
13 aggrieved California-based hourly non-exempt employees working time for which they were not
14 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
15 Wage Order.

16 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
17 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
18 employees. In California, an employer is required to pay hourly employees for all time that an
19 employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either
20 directly or indirectly, performing services that inure to the benefit of the employer.

21 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
22 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
23 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

24 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
25 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
26 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
27 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
28 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

1 Labor Code section 510.

2 19. In this case, Defendants failed to pay Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
4 worked due to Defendants' policies, practices, and/or procedures including, but not limited to,
5 requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees to undergo off-the-clock COVID-19 temperature checks, medical questionnaires,
7 and/or personal medical assessments prior to being permitted to clock in for their shifts.

8 20. The foregoing policies, practices, and/or procedures resulted in time during each
9 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
10 employees were under the control of Defendants but were not compensated. To the extent that the
11 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
12 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
13 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
14 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
15 sections 510 and 1194 and the applicable Wage Order.

16 21. **Failure to pay wages to hourly non-exempt employees for workdays that**
17 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
18 current and former aggrieved California-based hourly non-exempt employees regularly worked
19 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

20 22. California law requires an employer to authorize or permit an employee an
21 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
22 all duties and the employer relinquishes control over the employee's activities prior to the
23 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 5 at §11; *Brinker*
24 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the employee
26 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
27 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
28 shall be considered duty period and counted as time worked. But on duty!

period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

23. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 5 at §11.

24. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not limited to, the following:

(a) Failing to provide Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with compliant meal periods. Defendants periodically provided them with meal periods which were less than thirty (30) minutes, interrupted by Defendants requiring them to work, or were missed entirely due to chronic understaffing by Defendants; and

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on the premises and on-duty during meal periods in order to be available to perform work at the direction of Defendants. As a result of Defendants exercising such control over the Plaintiff and other current and former aggrieved California-based hourly non-exempt employees during meal periods, meal periods were not duty-free as required by California law.

25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

26. Employees' policies, practices, and/or procedures resulted in Plaintiff

1 and other current and former aggrieved California-based hourly non-exempt employees not
2 receiving wages to compensate them for workdays during which Defendants did not provide them
3 with meal periods in compliance with California law.

4 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
5 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
6 current and former aggrieved California-based hourly non-exempt employees regularly worked
7 shifts of more than three-and-a-half (3.5) hours.

8 28. California law requires every employer to authorize and permit an employee a rest
9 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
10 Code section 226.7; Wage Order 5 at §12. Under California law! [e]mployees are entitled to 10
11 m ! for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
12 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
13 / !*Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
14 section 226.7; Wage Order 5 at §12. Rest periods, insofar as practicable, shall be in the middle of
15 each work period. Wage Order 5 at §12. Additionally, the rest period requirement gates
16 employers to permit and authorizes employees to take off-duty rest periods. *Augustus v. ABM*
17 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
18 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

19 29. If the employer fails to authorize or permit a required rest period, the employer
20 must pay the employee one (1) hour of pay ! ! ! ar rate of pay for each workday
21 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
22 Wage Order 5 at § 12.

23 30. In this case, Defendants failed to authorize or permit all legally required and
24 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees due to Defendants policies, practices, and/or procedures including, but not
26 limited to, the following:

27 (a) Failing to provide Plaintiff and other current and former aggrieved
28 California-based hourly non-exempt employees with compliant rest periods. Defendants

periodically provided them with meal periods which were less than a net ten (10) minutes, interrupted by Defendants requiring them to work, or were missed entirely due to chronic understaffing by Defendants; and

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on the premises and on-duty during rest periods in order to be available to perform work at the direction of Defendants. As a result of Defendants exercising such control over the Plaintiff and other current and former aggrieved California-based hourly non-exempt employees during rest periods, rest periods were not duty-free as required by California law.

31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did not receive legally required and compliant rest periods, in violation of Labor Code section 226.7.

32. Defendants foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays in which Defendants did not provide them with rest periods in compliance with California law.

33. **Failure to pay accrued and vested vacation/PTO wages:** Defendants had a policy, practice, and/or procedure of providing its employees with paid vacation time and/or PTO.

34. Vacation/PTO wages are deferred wages that vest once accrued. An employer must pay its employees all unused vested vacation/PTO wages at the time of termination at the employees final rate of pay. *See* Labor Code section 227.3.

35. Defendants terminated Plaintiff and other current and former aggrieved California-based hourly non-exempt employees without paying them the full amount of their earned vacation/PTO wages, in violation of California law, and employed policies, practices, and/or procedures which ensured that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees would not receive their accrued and vested vacation/PTO wages

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

4 39. Additionally, and a derivative of Plaintiff's ! ! above, Defendants' failure
5 to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees all wages earned (including minimum wages, overtime wages, vacation/PTO wages,
7 meal period premium wages, and/or rest period premium wages) rendered Plaintiff's and other
8 current and former aggrieved California-based hourly non-exempt employees' wage statements
9 inaccurate, in violation of Labor Code section 226.

10 40. **Failure to pay employees all wages due at time of termination/resignation:** An
11 employer is required to pay all unpaid wages timely after an employee's employment ends. The
12 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
13 hours of resignation (Labor Code section 202).

14 41. As a derivative of Plaintiff's ! ! ! allegations above, because Defendants failed to pay
15 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
16 all their earned wages (including minimum wages, overtime wages, vacation/PTO wages, meal
17 period premium wages, and/or rest period premium wages), Defendants failed to pay those
18 employees timely after ! ! ! termination and/or resignation, in violation of Labor
19 Code sections 201, 202, and 203.

20 42. Defendants' ! ! ! of Wage Order 5 constituted violations of Labor Code
21 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

22 43. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
23 employee, on behalf of herself or herself and other current or former employees, to bring a civil
24 action to recover civil penalties against all Defendants pursuant to the procedures specified in
25 Labor Code section 2699.3.

26 44. Plaintiff has complied with the procedures for bringing suit specified in Labor
27 Code section 2699.3. On July 14, 2021, Plaintiff filed notice with LWDA and provided notice to
28 Defendants by certified mail which provided notice of the specific provisions of the Labor Code

alleged to have been violated, including the facts and theories to support the violations alleged.

45. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 65 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 65 days of the date of Plain ! ! ! !M EB! ! investigate ! /

46. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 227.3, 510, 512, 1194, 1197, and 1198 during the Civil Penalty Period in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 227.3, 512, and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

47. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HER BEHALF, ON BEHALF OF THE STATE OF CALIFORNIA, AND ON BEHALF OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

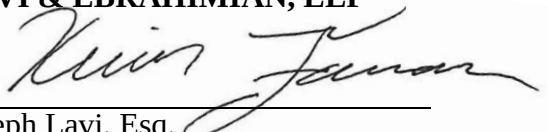
3. For ! fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: September 20, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



Joseph Lavi, Esq.
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Attorneys for Plaintiff
ANA MARIA FLORES
on behalf of herself and current and former
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