

1 Alan Harris (SBN 146079)
2 Priya Mohan (SBN 228984)
3 HARRIS & RUBLE
4 655 North Central Avenue, 17th Fl.
5 Glendale, California 91203
6 Telephone: 323.962.3777
7 Facsimile: 323.962.3004
8 aharris@harrisandruble.com
9 pmohan@harrisandruble.com

10 Attorneys for Plaintiff
11 Martha Martinez

FILED
Superior Court of California
County of Los Angeles
01/28/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Gomez Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MARTHA MARTINEZ,
11 individually and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 NATIONAL RENAL CARE, LLC
16 and DOES 1 to 10,

17 Defendants.
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Case No. 21STCV33729

FIRST AMENDED COMPLAINT

*[PAGA Representative, Law Enforcement
Action; Class Action]*

1. Failure to Pay Minimum Wage and Overtime Compensation, California Labor Code
2. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §226)
3. Failure to Provide Adequate Meal Periods
4. Failure to Provide Adequate Rest Periods
5. Continuing Wages (Cal. Lab. Code §203)
6. Failure to Produce Employment Records upon Request, Cal. Lab. Code § 226
7. Failure to Produce Employment Records upon Request, Cal. Lab. Code § 1198.5
8. Violations of Section 17200 *et seq.* of the California Business and Professions Code
9. Civil Penalties, Pursuant to Cal. Lab. Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, Martha Martinez, by and through her undersigned attorneys, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This is and/or will be a civil action and law enforcement action under the
4 California Labor Code Private Attorneys General Act (“PAGA”) seeking unpaid wages,
5 continuing wages, damages, civil penalties, statutory penalties and attorneys’ fees and
6 costs. Plaintiff has provided statutory notice to the California Labor and Workforce
7 Development Agency of the claims set forth in this complaint and to Defendant National
8 Renal Care, LLC. The statutory period has passed and this complaint asserts a claim for
9 relief under PAGA.

10 2. This is a civil class action seeking continuing wages, damages and attorneys’
11 fees and costs. Venue is proper in this judicial district, pursuant to California Business &
12 Professions Code section 17203 and California Code of Civil Procedure sections 395(a)
13 and 395.5. Defendants maintain an office, transact business, have an agent, or are found
14 in the County of Los Angeles and are within the jurisdiction of this Court for purposes of
15 service of process. The unlawful acts alleged herein had a direct effect on and were
16 committed within the County of Los Angeles, State of California.

17 3. Pursuant to California Code of Civil Procedure section 382, Plaintiff also
18 brings this case individually and as a class action.

19 4. Venue as to Defendants is proper in this judicial district, pursuant to
20 California Business & Professions Code section 17203 and California Code of Civil
21 Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business,
22 have an agent, or are found in the County of Los Angeles and is within the jurisdiction of
23 this Court for purposes of service of process. The unlawful acts alleged herein had a
24 direct effect on and were committed within the State of California.

25 5. This Court has jurisdiction over Defendants because, upon information and
26 belief, Defendants are either residents of California, have minimum contacts in
27 California, or otherwise intentionally avail themselves of the protections of California so
28 as to render California’s exercise of jurisdiction over Defendants consistent with

1 traditional notions of fair play and substantial justice. Emergency Rule 9 as promulgated
2 by the Judicial Council of California provides: “Notwithstanding any other law, the
3 statutes of limitations and repose for civil causes of action that exceed 180 days are tolled
4 from April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes
5 that: “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on
6 the filing of a pleading in court asserting a civil cause of action. The term “civil causes of
7 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as
8 used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed “as
9 including a special proceeding of a civil nature”) . . . The rule also applies to statutes of
10 limitations on filing of causes of action in court found in codes other than the Code of
11 Civil Procedure.”

12 **PARTIES**

13 6. Plaintiff Martha Martinez (hereinafter, “Plaintiff”) is an individual who,
14 during the time periods relevant to this Complaint, was employed by Defendants within
15 the County of Los Angeles, State of California. Plaintiff is resident of the State of
16 California.

17 7. Defendant National Renal Care, LLC, (“NRC”) was and is a business entity
18 doing business within the State of California. According to its website, NRC is a dialysis
19 management company that manages and operates multiple dialysis facilities in Southern
20 California. NRC provides both in-center hemodialysis and home therapy services for
21 end stage renal disease patients. <https://nationalrenalcare.com/about/>, last accessed June
22 2, 2021.

23 8. The true names and/or capacities, whether individual, corporate, associate or
24 otherwise, of Defendants Does 1 to 10 inclusive, are unknown to Plaintiff at this time,
25 who therefore sues said defendants by such fictitious names. When the true names and
26 capacities of said defendants have been ascertained, Plaintiff will amend this complaint
27 accordingly. Plaintiff is informed and believes and thereupon alleges that each defendant
28 designated herein as a Doe is responsible, negligently, intentionally, contractually, or in

1 some other actionable manner, for the events and happenings hereinafter referred to, and
2 caused injuries and damages proximately thereby to Plaintiff as is hereinafter alleged,
3 either through said defendants' own wrongful conduct or through the conduct of their
4 agents, servants, employees, representatives, officers or attorneys, or in some other
5 manner.

6 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

7 9. Plaintiff asserts claims against NRC for violations of the California Labor
8 Code, violations of the relevant Industrial Welfare Commission Wage Order (found in
9 the California Code of Regulations), and violations of the California Business and
10 Professions Code. For example, on November 11, 2020, Plaintiff punched in and
11 commenced work at 3:27 a.m., but she was only paid for her work commencing at 3:30
12 a.m. Thereafter, she punched out at 8:49 a.m., but was only paid through 8:45 a.m. At
13 no time on November 11, 2020 was Plaintiff provided a meal break. On November 2,
14 2020, Plaintiff punched out for lunch at 8:05 a.m. and returned to work at 8:25 a.m.,
15 suffering a truncated meal period, yet her wages were deducted for a full thirty minute
16 meal period. On October 2, 2020, Plaintiff punched in and commenced work at 3:26
17 a.m., but was not provided a meal break until 8:30 a.m., at which time the break was
18 tardy. In addition, the meal break was truncated, lasting but 27 minutes. On December
19 22, 2019, Plaintiff punched in and commenced work at 3:07 a.m., but was not provided a
20 meal break until 8:32 a.m., at which time the break was tardy. In addition, the meal break
21 was truncated, lasting but 27 minutes. On January 20, 2020, Plaintiff commenced work
22 at 3.34 a.m., but was not provided a meal break until 8.43 a.m. On December 31, 2019,
23 Plaintiff commenced work at 1:07 a.m., but was not provided a meal break until 6:32
24 a.m., all in tardy fashion. Indeed, even the tardy meal break which commenced at 6:32
25 a.m. was truncated, ending early at 6:58 a.m. With respect to that 26 minute break,
26 Defendant improperly deducted thirty minutes from Plaintiff's wages. The same sort of
27 truncated meal periods were provided to Plaintiff on December 24, 2019, each time with
28 Defendant deducting thirty minutes from her wages despite the fact that neither break

1 lasted that long. On August 26, 2020, Plaintiff worked from 3:15 a.m. to 4:15 p.m., but
2 was only provided two truncated meal breaks, one of twenty-seven minutes and another
3 of twenty-three minutes. Nevertheless, her wages for that day were deducted for sixty
4 minutes of meals rather than the fifty minutes with which she had been provided. On
5 August 21, 2020, Plaintiff worked for three hours and thirty-four minutes, but was only
6 paid for three and one half hours, rather than the full four hours to which she was entitled
7 as reporting time pay, or even the three hours and thirty four minutes which she actually
8 worked. Many other time entries appear to have been initiated and/or changed by a
9 manager.

10 10. This action is brought as a class action on behalf of all individuals who, at
11 any time since four years prior to February 27, 2017, were or have been employed by
12 NRC as a non-exempt hourly employee in the State of California.

13 11. Upon information and belief, Plaintiff alleges that NRC employs more
14 than 200 employees in California, of which more than half are paid on an hourly basis.
15 NRC operates at least seven locations in California.

16 12. Plaintiff worked as a Certified Hemodialysis Technician (CHT) in NRC's
17 Northridge, California facility from January, 2016 to January, 2021, or approximately 5
18 years. In Plaintiff's capacity as a CHT, she assisted with clinical and operational
19 procedures to meet patient care and operational needs of the facility.

20 13. Upon information and belief, NRC provides assigned, trained staff members
21 to its patients. In order to provide these services to patients, employees such as Plaintiff
22 are often not able to leave their assigned areas without relief from another responsible
23 employees to see to the patient's care. Upon information and belief, employees are
24 instructed that they may not leave their assigned areas for any reason without another
25 employee relieving them and taking responsibility for the care of their patients.

26 14. ***Meal and Rest Periods.*** As a result of NRC always having patients assigned
27 to and monitored by NRC employees, NRC employees cannot take statutorily required
28 meal or rest breaks unless other NRC employees comes to relieve them of their duties. In

1 this regard, both the California Labor Code and the California Code of Regulations
2 require employers to provide employees with a meal period of not less than thirty
3 minutes—during which the employees are to be relieved of all duty—before working
4 more than five hours per day. Cal. Lab. Code §§ 226.7(a), 512(a); 8 Cal. Code Regs.
5 11050 § 11(A). Similarly, both the Labor Code and the Code of Regulations require
6 employers to provide employees with ten-minute rest periods for the first four hours of
7 work and for each four hours—or major fraction thereof—thereafter. Cal. Lab. Code
8 § 226.7(a); 8 Cal. Code Regs. 11050 § 12(A). For each day that a required meal break is
9 not provided, the employer owes an additional hour of wages to the affected employee.
10 Cal. Lab. Code § 226.7(b); 8 Cal. Code Regs. 11050 § 11(B). Likewise, for each day that
11 a required rest break is not provided, the employer owes an additional hour of wages to
12 the affected employee. Cal. Lab. Code § 226.7(b); 8 Cal. Code Regs. 11050 § 12(B).

13 15. NRC's policy of around-the-clock service, coupled with a failure to employ
14 an adequate number of trained individuals, regularly results in NRC employees being
15 unable to take their required breaks. Moreover, in those instances when employees are
16 relieved of their responsibilities and provided with meal breaks, the meal breaks are often
17 not provided within the first five hours of the shift. Alternatively, NRC employees are
18 not provided with an entire thirty-minute break during which they are relieved of all
19 duties. Instead, the meal breaks are cut short, and the employees are required to go back
20 to work or finish eating their meal while on duty. When Plaintiff was not provided meal
21 or rest periods or when those breaks were curtailed, her supervisor would change
22 Plaintiff's time records to reflect that breaks were taken, even when they were not.

23 16. If an employee works at least ten hours a day, then he or she is required to
24 be given a second, uninterrupted thirty-minute meal period. Cal. Lab. Code §§ 226.7(a),
25 512(a). However, NRC employees who work such hours are routinely denied their right
26 to a second meal period. A waiver of California's meal-period requirements is valid *only*
27 if signed by the employer and the employee. 8 Cal. Code Regs. 11050 § 11(D). These
28 requirements have not been met in this case. Regardless of whether an employee records

late, missed, or truncated breaks, meal-period wages must *always* be paid.

17. Defendant violated section 226.7 of the California Labor Code and Wage Order 5 by failing to provide Plaintiff and similarly situated employees with the authorized rest and meal periods. Accordingly, Plaintiff and similarly situated employees are entitled to an additional hour of pay for each workday they were not properly provided a rest period and an additional one hour of pay for each workday Plaintiff was not properly provided with a meal period. See Cal. Lab. Code § 226.7(b).

18. Compensation for missed rest and meal periods constitutes wages within the meaning of section 200 *et seq.* of the California Labor Code.

19. ***Overtime and Minimum Wage.*** At all times relevant hereto, sections 1194 and 1198 of the California Labor Code and Wage Order 5 required (1) the payment of at least the minimum wage, (2) the payment of wages equal to one-and-one-half times an employee's regular rate of pay for all hours worked in excess of eight per day or forty per week and (3) the payment of wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve per day and for all hours worked in excess of eight on the seventh day of work in any one workweek.

20. At all relevant times mentioned herein, section 510 of the California Labor Code provided, in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one 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 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. Nothing in this section requires an employer to combine more than one rate of overtime

1 compensation in order to calculate the amount to be paid to an employee for
2 any hour of overtime work. The requirements of this section do not apply to
3 the payment of overtime compensation to an employee working pursuant to
4 any of the following:

5 (1) An alternative workweek schedule adopted pursuant to Section 511.

6 (2) An alternative workweek schedule adopted pursuant to a collective
7 bargaining agreement pursuant to Section 514.

8 Cal. Lab. Code § 510(a).

9 21. At all relevant times mentioned herein, section 1194(a) of the California
10 Labor Code provided, in relevant part:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil
14 action the unpaid balance of the full amount of this minimum wage or
15 overtime compensation, including interest thereon, reasonable attorney's
16 fees, and costs of suit.

17 Cal. Lab. Code § 1194(a).

18 22. With regard to the employment of Plaintiff as described above, the
19 provisions of subparagraphs (1) and (2) of section 510 of the California Labor Code were
20 inapplicable in that no alternative workweek schedule had been adopted pursuant to
21 section 510 and Plaintiff's employment was not governed by a collective bargaining
22 agreement as described in section 514 of the California Labor Code. When computing the
23 "regular" rate of its non-exempt employees, Defendant failed to give proper consideration
24 to bonus and other payments, resulting in overtime payments which were artificially low.
25 For example, in a paycheck dated December 10, 2020, Plaintiff was paid \$500, but that
26 payment was not considered in computing the appropriate regular rate for overtime and
27 no indication was made on the wage statement regarding the time period to which the
28 \$500 payment related, the wage statement indicating a start and end date of the period as

1 the same day, December 10, 2020. Plaintiff had earned overtime and double time wages
2 for the pay period from November 29, 2020 to December 12, 2020, yet no portion of the
3 \$500 payment of December 10, 2020 was considered in establishing the regular rate for
4 overtime or double time wages paid on that day. Further, by way of additional example,
5 in a paycheck dated July 17, 2020, Plaintiff was paid \$100, for “Temp Emergpd”, but that
6 payment was not considered in computing the appropriate regular rate for overtime
7 Plaintiff had earned overtime wages for the pay period from June 28 to July 11, 2020 yet
8 no portion of the \$100 payment of July 17, 2020 was considered in establishing the
9 regular rate for overtime wages paid on that day. Similar miscalculations occurred during
10 the pay period commencing March 22, 2020 and thereafter until at least July of 2020.

11 23. During Plaintiff’s employment with Defendant, Defendant failed to provide
12 Plaintiff with minimum and/or overtime compensation as required by the California
13 Labor Code and/or IWC Wage Order 5. Plaintiff’s manager falsified records of Plaintiff
14 when she did work over eight hours in a day or over forty hours in a week to omit
15 Plaintiff’s overtime work. According to the Labor Code, “[e]ight hours of labor
16 constitutes a day’s work,” and “[a]ny work in excess of eight hours in one workday and
17 any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate
18 of no less than one and one-half times the regular rate of pay for an employee.” Cal. Lab.
19 Code § 510(a). At all relevant times mentioned herein, section 1194 of the California
20 Labor Code provided:

21 Notwithstanding any agreement to work for a lesser wage, any employee
22 receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil
24 action the unpaid balance of the full amount of this . . . overtime
25 compensation, including interest thereon, reasonable attorney’s fees, and
26 costs of suit.

27 Cal. Lab. Code § 1194. At all relevant times mentioned herein, section 1194.2 of
28 the California Labor Code provided:

1 (a) In any action under . . . Section 1194 to recover wages because of the
2 payment of a wage less than the minimum wage fixed by an order of the
3 commission, an employee shall be entitled to recover liquidated damages in
4 an amount equal to the wages unlawfully unpaid and interest thereon.

5 Cal. Lab. Code § 1194.2. Notwithstanding the foregoing requirements of law, Plaintiff
6 was routinely denied proper payment of minimum wage or overtime wages. For example,
7 Plaintiff was not compensated for all work performed after the scheduled work shift.
8 Additionally, Plaintiff and other employees were not compensated for time the employee
9 worked during a meal break. The law requires that Defendant is required to pay
10 employees for all hours worked (meaning the time during which an employee is subject
11 to the control of an employer, including all the time the employee is suffered or permitted
12 to work, whether or not required to do so) at the appropriate minimum wage. NRC, as a
13 matter of established company policy and procedure, at each and every one of the
14 individual facilities own and/or operated by Defendant, consistently: (a) administered a
15 uniform company policy and practice as to the pay policies regarding Plaintiff and the
16 other employees; and (b) Rounded the actual time worked and recorded by Plaintiff and
17 the other employees, usually down, so that during the course of their employment,
18 employees were paid far less than they would have been paid for actual recorded time
19 rather than “rounded” time, and less than the appropriate minimum wage. Defendant
20 required employees to remain under its control without paying, which resulted in
21 employees earning less than the legal minimum wage in California. Defendant’s pattern
22 and practice in uniform administration of corporate policy regarding its failure to pay the
23 legal minimum wage to employees as described herein is unlawful and creates
24 entitlement, pursuant to Cal. Lab. Code § 1194(a), to recovery by employees of the
25 unpaid balance of the unpaid minimum wages owed, calculated as the difference between
26 the straight time compensation paid and the applicable minimum wage, including interest
27 thereon. Pursuant to Cal. Lab. Code § 1194.2(a) (which provides that in any action under
28 § 1194, an employee shall be entitled to recover liquidated damages), Plaintiff and

1 employees may seek recovery of liquidated damages on the straight-time portion of
2 uncompensated hours of work (not including the overtime portion thereof) in an amount
3 equal to the wages unlawfully unpaid and interest thereon.

4 24. At the end of a regularly scheduled shift, Plaintiff and other employees were
5 often not done with the work required for that day. In such instances, Plaintiff and other
6 employees were not paid minimum wages and/or overtime wages for their time spent
7 working off the clock.

8 25. **Pay Stubs.** On account of the above-described violations, the pay stubs
9 provided to employees do not accurately reflect the wages earned. This constitutes an
10 additional violation of the Labor Code. See Cal. Lab. Code § 226(a) (requiring that
11 employees be provided with pay stubs accurately reflecting, *inter alia*, gross wages
12 earned, net wages earned, and all applicable hourly rates). Section 226 sets forth the
13 damages owing to NRC employees on account of these violations. See id. § 226(e)
14 (entitling employees to “the greater of all actual damages or fifty dollars (\$50) for the
15 initial pay period in which a violation occurs and one hundred dollars (\$100) per
16 employee for each violation in a subsequent pay period, not exceeding an aggregate
17 penalty of four thousand dollars (\$4,000)”).

18 26. At all relevant times mentioned herein, section 204 of the California Labor
19 Code provided, in relevant part:

20 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
21 204.2, earned by any person in any employment are due and payable twice
22 during each calendar month, on days designated in advance by the employer
23 as the regular paydays. Labor performed between the 1st and 15th days,
24 inclusive, of any calendar month shall be paid for between the 16th and the
25 26th day of the month during which the labor was performed, and labor
26 performed between the 16th and the last day, inclusive, of any calendar
27 month, shall be paid for between the 1st and 10th day of the following
28 month.

1 Cal. Lab. Code § 204.

2 27. To date, Defendant has failed to compensate Plaintiff for all of her earned
3 wages in accordance with the California Labor Code and Wage Order 9.

4 28. Defendant's failure to pay Plaintiff within the time provided by section 201
5 of the California Labor Code has been and is "willful" within the meaning of section 203
6 of the California Labor Code and, accordingly, they are entitled to the "continuing
7 wages" for which provision is made by section 203.

8 29. At all relevant times mentioned herein, section 203 of the California Labor
9 Code provided:

10 If an employer willfully fails to pay, without abatement or reduction, in
11 accordance with Sections 201, 201.3, 201.5, 201.9, 202 and 202.5, any
12 wages of an employee who is discharged or who quits, the wages of the
13 employee shall continue as a penalty from the due date thereof at the same
14 rate until paid or until action therefore is commenced; but the wages shall
15 not continue for more than 30 days.

16 Cal. Lab. Code § 203(a).

17 30. On August 27, 2021 Plaintiff requested authorization from the California
18 Labor and Workforce Development Agency ("LWDA") to collect civil penalties against
19 Defendant under the Private Attorneys General Act ("PAGA"), California Labor Code
20 section 2698 *et seq.*, on behalf of herself and other former and current aggrieved
21 employees.

22 31. At all relevant times, section 2699 of the California Labor Code provided in
23 subpart (a) and subparts (f) through (g):

24 (a) Notwithstanding any other provision of law, any provision of this code that
25 provides for a civil penalty to be assessed and collected by the Labor and
26 Workforce Development Agency or any of its departments, divisions, boards,
27 agencies or employees, for a violation of this code, may, as an alternative, be
28 recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the
2 procedures specified in Section 2699.3.

3

4 (f) For all provisions of this code except those for which a civil penalty is
5 specifically provided, there is established a civil penalty for a violation of
6 these provisions, as follows . . . (2) If, at the time of the alleged violation, the
7 person employs one or more employees, the civil penalty is one hundred
8 dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation and two hundred dollars (\$200) for each aggrieved employee per
10 pay period for each subsequent violation.

11

12 (g)(1) Except as provided in paragraph (2), an aggrieved employee may
13 recover the civil penalty described in subdivision (f) in a civil action
14 pursuant to the procedures specified in Section 2699.3 filed on behalf of
15 himself or herself and other current or former employees against whom one
16 or more of the alleged violations was committed. Any employee who
17 prevails in any action shall be entitled to an award of reasonable attorney's
18 fees and costs, including any filing fee paid pursuant to subparagraph (B) of
19 paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of
20 subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit
21 an employee's right to pursue or recover other remedies available under state
22 or federal law, either separately or concurrently with an action taken under
23 this part.

24 Cal. Lab. Code § 2699.

25 32. As the statutory notice period set forth in Cal. Lab. Code § 2699.3 has
26 passed, Plaintiff may now bring a claim for relief for civil penalties under PAGA
27 pursuant. Pursuant to section 2698 *et seq.* of the California Labor Code, Plaintiff
28 contends that she is entitled to recover civil penalties against Defendant on behalf of

1 herself and other former or current aggrieved employees for Defendant's violations of the
2 California Labor Code and applicable Industrial Welfare Commission Wage Order.

3 33. ***Unfair Competition.*** By underpaying its employees as described above,
4 NRC has gained a decided advantage over competitors that abide by wage statement,
5 minimum wage, overtime and meal-and-rest-period laws and laws governing the payment
6 of final wages due upon termination. Accordingly, NRC's failure to provide adequate
7 meal and rest periods to its employees, its failure to pay employees correct minimum
8 wage and overtime, its failure to provide proper wage statements to employees, and its
9 failure to pay all earned wages upon the termination of employment. constitute unfair
10 competition. Section 17200 *et seq.* of the California Business and Professions Code
11 prohibits such unfair competition.

12 **CLASS-ACTION ALLEGATIONS**

13 34. The class represented by Plaintiff consists of all individuals employed by
14 NRC as non-exempt hourly employees in California during the period beginning four
15 years prior to the filing of this Complaint.

16 35. The proposed Class is ascertainable in that its Members can be identified
17 using the information contained in NRC's payroll and personnel records.

18 36. NRC's failure to pay minimum wages and overtime compensation, as
19 required by sections 510 and 1194 of the California Labor Code, entitles Plaintiff and
20 each Class Member to their unpaid minimum wages and/or overtime compensation, with
21 interest, and liquidated damages in accordance with sections 1194 and 1194.2 of the
22 California Labor Code.

23 37. NRC's failure to make payments within the time provided by sections 201 or
24 202 of the California Labor Code has been and is "willful" within the meaning of section
25 203 of the California Labor Code and that, accordingly, Plaintiff and each Class Member
26 who quit or was discharged and was not paid in accordance with the law is entitled to the
27 continuing wages provided for by section 203 of the California Labor Code.
28

1 38. NRC's failure to pay wages as provided by section 226.7 of the California
2 Labor Code and the applicable Wage Order entitles each Class Member to payment of
3 such earned but unpaid wages owing on account of failing to provide proper rest and
4 meal periods and an additional hour of pay at the employee's regular rate of
5 compensation for each work day that the proper rest and meal periods were not provided,
6 as well as liquidated statutory damages.

7 39. NRC, as to Plaintiff and each Class Member, also failed to accurately
8 provide the data required by section 226(a) of the California Labor Code and,
9 accordingly, Defendant's failure to provide such data entitles Plaintiff and each Class
10 Member to damages. Plaintiff contends that the failure of NRC to provide the data
11 required by section 226 of the California Labor Code entitles each Class Member to
12 either actual damages or statutory damages, whichever is greater. Plaintiff contends that
13 NRC's failure to pay wages as provided by section 226.7 of the California Labor Code
14 entitles each Class Member to payment of such earned but unpaid wages owing on
15 account of missed rest periods and meal breaks. Plaintiff contends that NRC's failure to
16 pay overtime wages as provided by the California Labor Code entitles each Class
17 Member to payment of such earned but unpaid wages, Defendant having, inter alia, failed
18 to consider unpaid wages owed on account of missed rest periods and meal breaks in
19 computing the overtime rate applicable to Plaintiff and Class Members. Plaintiff contends
20 that the failure of Defendant to make final wage payments within the time provided by
21 sections 201 and/or 202 of the California Labor Code has been and is "willful" within the
22 meaning of section 203 of the California Labor Code and that, accordingly, each Class
23 Member who has had his employment with Defendants terminated is entitled to the
24 "continuing wages" for which provision is made by section 203 of the California Labor
25 Code. Indeed, Plaintiff's last day of work was January 22, 2021, but she was not
26 provided payment of her PTO accrual until a check was cut for that amount, on or about
27 February 6, 2021, all in violation of section 227.3 of the California Labor Code, a
28 violation which separately gives rise to penalties under section 203 of the Code. Another

1 tardy check for earned wages and overtime was not even prepared until January 23, 2021,
2 and then honored in tardy fashion, again, a violation which separately gives rise to
3 penalties under section 203 of the Code.

4 40. The Members of the Class are sufficiently numerous in that the Class is
5 believed to number in the hundreds—if not the thousands—and that joinder of all such
6 individuals would therefore be impracticable. Nevertheless, the number of persons in the
7 Class is not so great as to make the case unmanageable, and the disposition of the claims
8 of the Class on a class-wide basis will provide substantial benefits to both the parties and
9 the Court.

10 41. There is a well-defined community of interest in the questions of law and
11 fact involved affecting the parties, and the questions of law and fact common to the
12 Classes predominate over questions that may impact individual Class Members. As to
13 meal and rest breaks, these common questions include whether NRC's policy of
14 uninterrupted service and patient care, coupled with NRC's failure to employ an adequate
15 number of trained individuals, systematically results in employees being unable to take
16 their required breaks, including an initial meal break within the first five hours of work.
17 They also include whether NRC's meal-period policy constitutes an improper waiver of
18 the second required meal period. As to overtime, the common questions include whether
19 NRC fails to properly compute its employees' overtime rates of pay and whether NRC
20 failed to compensate employees for required off the clock work. Finally, as to Plaintiff's
21 remaining claims, the common questions include whether the above-described meal-and-
22 rest-break, and overtime-pay violations lead to derivative pay-stub and unfair-
23 competition violations.

24 42. Plaintiff's claims are typical of those of the Class because she was employed
25 by NRC during the relevant time, she was regularly prevented from taking her required
26 breaks and her overtime rate of pay was improperly calculated.

27 43. Plaintiff will fairly and adequately represent the interests of the Classes in
28 that she has no disabling conflicts of interest that would be antagonistic to other Members

1 thereof. Plaintiff seeks relief that is not antagonistic or adverse to the Members of the
2 Classes in that the infringement of her rights and the damages that she suffered are
3 typical of all other Members of the Classes. Additionally, she has retained counsel who
4 are competent and experienced in class-action litigation.

5 44. The nature of this action and the laws available to Plaintiff and Class
6 Members make the class-action format a particularly efficient and appropriate procedure
7 to redress the wrongs alleged herein. First, as noted above with respect to Plaintiff's
8 employment, the amounts at stake are relatively small. Given that this case involves a
9 large corporate defendant, if each Class Member were required to file an individual
10 lawsuit, NRC would necessarily gain an unfair advantage because it would be able to
11 exploit and overwhelm the limited resources of each individual plaintiff with its vastly
12 superior legal and financial resources. Second, requiring each Class Member to pursue
13 an individual remedy would discourage the assertion of lawful claims by employees who
14 would be disinclined to file an action against their current employer for fear of retaliation.
15 Third, the prosecution of separate actions by individual Class Members would create a
16 substantial risk of inconsistent or varying adjudications with respect to individual Class
17 Members against NRC. Fourth, proof of a common business practice will establish the
18 right of each Class Member to recover on the causes of action alleged. Such a pattern,
19 practice, and uniform administration of illegal corporate policies with respect to
20 employee compensation, as described herein, creates an entitlement in common for
21 Plaintiff and the Class to recover in a civil action the unpaid balance of the full amount of
22 the compensation owing, including interest thereon, reasonable attorney's fees, and costs
23 of suit according to the mandate of the California Labor Code. Accordingly, Plaintiff and
24 the Class are entitled in common to restitution and disgorgement of funds withheld
25 improperly by NRC.

26 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

27 45. On August 27, 2021 Plaintiff gave written notice of Defendant's violations
28 of various provisions of the California Labor Code as alleged in the Complaint to the

1 Labor and Workforce Development Agency (“LWDA”) via its online system and to the
2 Defendant via certified mail.

3 46. At all relevant times mention herein, section 2699.3 of the California Labor
4 Code provided in pertinent part:

5 (a) A civil action by an Aggrieved Employee pursuant to subdivision (a) or
6 (f) of Section 2699 alleging a violation of any provision listed in Section
7 2699.5 shall commence only after the following requirements have been
8 met:

9 (1)(A) The Aggrieved Employee or representative shall give written notice
10 by online filing to the Labor and Workforce Development Agency and by
11 certified mail to the employer of the specific provisions of this code alleged
12 to have been violated, including the facts and theories to support the alleged
13 violation.

14 . . .

15 (2) (A) The agency shall notify the employer and the Aggrieved Employee
16 or representative by certified mail that it does not intend to investigate the
17 alleged violation within 60 calendar days of the postmark date of the notice
18 received pursuant to paragraph (1). Upon receipt of that notice or if no
19 notice is provided within 65 calendar days of the postmark date of the notice
20 given pursuant to paragraph (1), the Aggrieved Employee may commence a
21 civil action pursuant to Section 2699.

22 Cal. Lab. Code §2699.3. Sixty five (65) calendar days of the postmark date of the notice
23 sent by Plaintiff have passed. Therefore, Plaintiff may “commence a civil action
24 pursuant to Section 2699.” Cal. Lab. Code §2699.3(a)(2)(A).

25 47. The Aggrieved Employees to be represented by Plaintiff include all natural
26 persons who were employed by Defendant in California as drivers for it during the period
27 from one year prior to the filing of the Complaint to the date of the filing of a motion for
28 summary adjudication of the claims or trial of this case (the “Aggrieved Employees”).

48. The number of Aggrieved Employees is presently unknown yet believed to be in excess of 100 persons.

49. The identity of the Aggrieved Employees is readily ascertainable through an examination of the records which the Defendant is required by law to keep and which it has kept. Likewise, the civil penalties owed to the State of California, Plaintiff, and to each Aggrieved Employee is readily ascertainable by an examination of the same records. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

FIRST CLAIM FOR RELIEF

(As against Defendant NRC on behalf of Plaintiff and the Class -- Failure to Pay Minimum Wages and Overtime Compensation, California Labor Code)

50. The paragraphs of this Complaint are re-alleged and incorporated by reference.

51. Pursuant to Labor Code section 1194(a), Plaintiff may bring a civil action for overtime wages directly against the employer in Plaintiff's name without first filing a claim with the Department of Labor.

52. At all times herein relevant, the sections of the California Labor Code and of the California Code of Regulations referenced herein applied to the employment of Plaintiff and Subclass Members.

53. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the California Code of Regulations.

54. At all times herein relevant, sections 510, 515, 1194, and 1198 of the California Labor Code and 8 California Code of Regulations section 11050 provided for the payment of minimum wages and overtime wages equal to one-and-one-half times an employee's regular rate of pay for all hours worked over eight per day or forty per week, as well as for the payment of overtime wage equal to double the employee's regular rate

1 of pay for all hours worked in excess of twelve in any day and for all hours worked in
2 excess of eight on the seventh day of work.

3 55. Under the provisions of sections 510, 515, 1194, and 1198 of the California
4 Labor Code and 8 California Code of Regulations section 11050, Plaintiff and each Class
5 Member should have received minimum and overtime wages in a sum according to proof.

6 56. Defendant NRC owes Plaintiff and each Class Member minimum and
7 overtime wages pursuant to sections 510, 515, 1194, and 1198 of the California Labor
8 Code and 8 California Code of Regulations section 11050 according to proof at trial of
9 the hours worked for the period of time from four years prior to the filing of the
10 Complaint to date.

11 57. Defendant NRC has failed and refused, and continues to fail and refuse, to
12 pay Plaintiff and Class Members the amounts that are owed. Defendant's failure to pay
13 Plaintiff and each Class Member who has quit his or her employment with Defendant or
14 whose employment has been terminated by Defendant violates California Labor Code
15 sections 201 and 202, which therefore subjects Defendants to continuing-wages liability
16 pursuant to section 203 of the California Labor Code for the period of time from four
17 years prior to the filing of the Complaint to date.

18 58. Plaintiff, individually and on behalf of others similarly situated, requests
19 payment of overtime compensation according to proof, interest, attorney's fees, and costs
20 pursuant to Labor Code section 1194(a).

21 59. Plaintiff and the Class also request relief as described below.

22 **SECOND CLAIM FOR RELIEF**

23 **(As against Defendant NRC on behalf of Plaintiff and the Class – Failure to Provide**
24 **Accurate Itemized Wage Statements)**

25 60. The paragraphs of this Complaint are re-alleged and incorporated by
26 reference.

27 61. At all times herein relevant, section 226 of the California Labor Code and 8
28 California Code of Regulations section 11050 required that employers provide

1 employees with itemized wage statements showing (1) gross wages earned, (2) the total
2 hours worked by the employee, (3) net wages earned and (4) information regarding the
3 time and wages for work performed by Plaintiff but not paid for by Defendant NRC.
4 Moreover, Labor Code section 226(e) provided that, if an employer knowingly and
5 intentionally fails to provide a statement detailing (1) gross wages earned, (2) the total
6 hours worked by the employee, (3) net wages earned and (4) information regarding the
7 time and wages for work performed by Plaintiff but not paid for by NRC, then the
8 employee is entitled to recover the greater of all actual damages or \$50 for the initial
9 violation and \$100 for each subsequent violation, up to a maximum of \$4,000.

10 62. Defendant NRC has knowingly and intentionally failed to furnish Plaintiff
11 and Class Member with proper wage statements, which violates section 226(a) of the
12 California Labor Code insofar as Plaintiff and members of the Class have not received
13 data that accurately sets forth the information delineated in section 226(a) with respect to
14 how much pay they received for hours worked. The failure to identify required data such
15 as gross and net wages earned, total hours worked and all applicable hourly rates in effect
16 and the corresponding hours worked at each hourly rate caused Plaintiff and other
17 members of the putative Class injury by depriving them of information to which they are
18 legally entitled.

19 63. Plaintiff and the Class Members request relief as described below.

20 **THIRD CLAIM FOR RELIEF**

21 **(As against Defendant NRC on behalf of Plaintiff and the Class -- Failure to Provide**
22 **Adequate Meal Periods)**

23 64. The paragraphs of this Complaint are re-alleged and incorporated by
24 reference.

25 65. At all times herein relevant, section 226.7 of the California Labor Code and
26 8 California Code of Regulations section 11050 provided that employees must be
27 provided a first meal period of not less than thirty minutes before working more than five
28 hours per day and a second meal period of not less than thirty minutes before working

1 more than ten hours per day. Sections 226.7 and 512 of the California Labor Code, as
2 well as 8 California Code of Regulations section 11050, also required employers to
3 provide a second meal period of not less than thirty minutes, during which the employees
4 are again to be relieved of all duty, before the employees work more than ten hours per
5 day. According to the Regulation:

6 Notwithstanding any other provision of this order, employees in the health
7 care industry who work shifts in excess of eight (8) total hours in a workday
8 may voluntarily waive their right to one of their two meal periods. In order
9 to be valid, any such waiver must be documented in a written agreement that
10 is voluntarily signed by both the employee and the employer. The employee
11 may revoke the waiver at any time by providing the employer at least one
12 day's written notice. The employee shall be fully compensated for all
13 working time, including any on-the-job meal period, while such a waiver is
14 in effect.

15 66. Because Defendant NRC failed to provide the required meal breaks to
16 Plaintiff and other Class Members, including second meal breaks when required,
17 Defendant NRC is liable to them for one hour of additional pay at the regular rate
18 of compensation for each workday that the proper meal periods were not provided,
19 pursuant to Labor Code section 226.7 and California Code of Regulations section
20 11050, for the period of time from three years prior to the filing of the Complaint
21 to date.

22 67. Plaintiff and the Class Members request relief as described below.

23 **FOURTH CLAIM FOR RELIEF**

24 **(As against Defendant NRC on behalf of Plaintiff and the Class -- Failure to Provide**
25 **Adequate Rest Periods)**

26 68. The paragraphs of this Complaint are re-alleged and incorporated by
27 reference.
28

69. At all times herein relevant, section 226.7 of the California Labor Code and 8 California Code of Regulations section 11050 provided that employees must receive rest periods of ten minutes for each four hours of work or major fraction thereof.

70. Because Defendant failed to provide the required rest breaks, it is liable to Plaintiff and other Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code section 226.7 and California Code of Regulations section 11050, for the period of time from the three years prior to the filing of the Complaint to date.

71. Plaintiff and the Class request relief as described below.

FIFTH CLAIM FOR RELIEF

(As against Defendant NRC on behalf of Plaintiff and the Class -- Continuing Wages under Section 203 of the California Labor Code)

72. The paragraphs of this Complaint are re-alleged and incorporated by reference.

73. At all times herein relevant, Labor Code sections 201 and 202 provided that employees must receive wages earned and unpaid promptly upon termination or resignation.

74. Plaintiff's employment was terminated, but she was not provided her wages within the time provided by sections 201 and/or 202 of the California Labor Code, despite Defendant's knowledge of its obligation to do so. Defendant's actions were "willful" within the meaning of section 203 of the California Labor Code.

75. Plaintiff and each Class Member who was discharged or quit, are therefore entitled to continuing wages from the date on which their final wages were due until the date on which Defendant makes payment of the wages, not to exceed thirty days.

76. Plaintiff and the Class Members request relief under the provisions of Section 203 of the California Labor Code as described below.

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(As against Defendants NRC on behalf of Plaintiff -- Failure to Provide Proper Response to Information Request (Cal. Lab. Code §226(c)))

77. The paragraphs of this Complaint are re-alleged and incorporated by reference.

78. In February, 2021, pursuant to the provisions of section 226(c) of the California Labor Code, Plaintiff properly requested of Defendant NRC that her employment records be provided to her. Despite proper request, not all the documents to which Plaintiff was entitled were timely produced to her.

79. Accordingly, Plaintiff, individually, requests payment of \$750 as for which provision is made by section 226(f) of the California Labor Code (“[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer”).

SEVENTH CLAIM FOR RELIEF

**(As against Defendant NRC on behalf of Plaintiff -- Failure to Provide Employment
Records Upon Request (Cal. Lab. Code § 1198.5))**

80. The paragraphs of this Complaint are re-alleged and incorporated by reference.

81. Pursuant to Labor Code section 1198.5, an employer shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer.

82. In or about February, 2021 Plaintiff requested that Defendant NRC permit inspection or copying of her employment records pursuant to Labor Code section 1198.5. Despite proper request, not all the documents to which Plaintiff was entitled were timely produced to her within 30 days of the request. Pursuant to Labor Code Section 1198.5(k), Plaintiff is entitled, and hereby seeks to recover from Defendant NRC a seven-hundred-

1 fifty dollar (\$750) penalty, reasonable attorneys' fees, and the costs of bringing this cause
2 of action.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(As against Defendant NRC on behalf of Plaintiff and the Class -- Violations of**
5 **Section 17200 *et seq.* of the California Business and Professions Code)**

6 83. The paragraphs of this Complaint are re-alleged and incorporated by
7 reference.

8 84. Defendant's acts constitute a continuing and ongoing unlawful activity
9 prohibited by section 17200 *et seq.* of the California Business and Professions Code, and
10 they justify restitution and the issuance of an injunction pursuant to section 17203 of the
11 Business and Professions Code.

12 85. Labor Code section 90.5(a) articulates the public policy of this State to
13 enforce minimum labor standards vigorously, including the requirements to pay
14 minimum wages, overtime wages and benefits pursuant to Labor Code sections 510, 515,
15 1194, and 1198; the requirements to provide accurate itemized wage statements pursuant
16 to Labor Code section 226; the requirement to provide adequate meal and rest periods
17 pursuant to Labor Code sections 226.7 and 512; and the requirement to pay wages earned
18 and unpaid promptly pursuant to Labor Code section 203. Defendant's conduct of
19 requiring certain employees to work off the clock, and an excessive amount of hours in
20 the absence of overtime, without providing accurate itemized wage statements, without
21 providing adequate meal and rest periods, and without paying wages earned and unpaid
22 promptly upon termination or resignation directly violates state law.

23 86. Through the wrongful and illegal conduct alleged herein, Defendant has
24 acted contrary to the public policy of this State.

25 87. Defendant engaged in unlawful business acts and practices by violating
26 California law, including but not limited to, sections 201, 202, 203, 204, 226, 226.7, 510,
27 512, 1174, 1194, and 1198 of the California Labor Code and 8 California Code of
28 Regulations section 11050.

1 88. Under the provisions of the section 17203 of the California Business and
2 Professions Code, Plaintiff and each Class Member should receive restitution for
3 Defendant's failure to pay minimum wages and overtime wages, Defendant's failure to
4 provide accurate itemized wage statements, Defendant's failure to provide adequate meal
5 and rest periods, and Defendant's failure to provide wages earned and unpaid promptly
6 upon termination or resignation, in a sum according to proof for the period of time from
7 the four years preceding the filing of the Complaint to date.

8 89. As a result of Defendant's violations of 17200 *et seq.* of the California
9 Business and Professions Code, Defendant has unjustly enriched itself at the expense of
10 Plaintiff, Class Members, and the general public.

11 90. To prevent this unjust enrichment, Defendant should be required to make
12 restitution to Plaintiff and Class Members, as identified in this Complaint (and as will be
13 identified through discovery into Defendant's books and records), for the period of time
14 from the four years preceding the filing of the Complaint to date.

15 91. Plaintiff also requests that the Court enter such orders or judgments as may
16 be necessary to restore to any person in interest any money that may have been acquired
17 by means of such unfair practices, as provided in section 17203 of the California
18 Business and Professions Code.

19 92. Plaintiff and Class Members are "persons" within the meaning of section
20 17204 of the California Business and Professions Code, and each has standing to bring
21 this claim for relief.

22 93. Pursuant to section 17203 of the California Code of Civil Procedure,
23 Plaintiff, on behalf of himself and all current and former Class Members, requests
24 restitution of all sums obtained by Defendant in violation of section 17200 *et seq.* of the
25 California Business and Professions Code for the period of time from the four years
26 preceding the filing of the Complaint to date.

27 94. Plaintiff and the Class also request relief as described below.
28

1 **NINTH CLAIM FOR RELIEF**

2 **(As against Defendant NRC on behalf of Plaintiff, the California Labor &**
3 **Workforce Development Agency and Aggrieved Employees –Cal. Lab. Code § 2698,**
4 **et seq.)**

5 95. The paragraphs of this Complaint are re-alleged and incorporated by
6 reference.

7 96. Pursuant to section 2699.3(a)(1) of the Labor Code, Plaintiff submitted
8 Plaintiff's PAGA Claim Notice online to the California Labor and Workforce
9 Development Agency ("LWDA") and notified the LWDA of the specific provisions of
10 the Labor Code alleged to have been violated by Defendants, including the theories set
11 forth in the Complaint. Plaintiff also gave written notice by certified mail to Defendant.

12 97. At all relevant times, California Labor Code section 2699.3(a)(2)(A)
13 provided:

14 The agency shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation within 60 calendar days of the postmark date of the notice
17 received pursuant to Paragraph (1). Upon receipt of that notice or if no
18 notice is provided within 65 calendar days of the postmark date of the notice
19 given pursuant to Paragraph (1), the aggrieved employee may commence a
20 civil action pursuant to Section 2699.

21 Cal. Lab. Code § 2699.3(a)(2)(A). Sixty-five (65) calendar days from the postmark date
22 of the notice sent by Plaintiff have now passed. Therefore, Plaintiff may "commence a
23 civil action pursuant to Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

24 98. Plaintiff seeks to recover the PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
26 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

27 99. Plaintiff seeks to bring a representative action on behalf of herself and the
28 State of California as well as on behalf of a group of Aggrieved Employees defined as:

1 Plaintiff and/or other persons who performed services as nonexempt workers in
2 California for Defendant during the period from one year prior to the filing of the PAGA
3 Notice until this case is resolved (“Aggrieved Employees”).

4 100. Plaintiff will seek civil penalties pursuant to PAGA for violations of the
5 following Labor Code provisions:

6 **Failure to provide payroll records in violation of Cal. Lab. Code §§ 226(b) and**
7 **1198.5.**

8 Employers must afford current and former employees the right to inspect or copy
9 the records pertaining to that current or former employee, upon reasonable request to the
10 employer. Plaintiff has not been provided with an opportunity to inspect or copy all
11 payroll records within the time limits in these statutes. Upon information and belief, other
12 Aggrieved Employees have requested their payroll records but have not been given
13 access to them pursuant to section 226(b) and 1998.5. Code § 2699(f)(2) imposes a civil
14 penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200
15 per pay period per Aggrieved Employee for subsequent violations for all Code provisions
16 for which a civil penalty is not specifically provided.

17 **Failure to pay wages and/or final wages in violation of Lab. Code §§ 201, 202**
18 **and 203.**

19 With respect to violations of Code §§ 201 and 202, the failure of Defendant to
20 make final payments within the time provided for has been and is “willful” within the
21 meaning of such word as used in Section 203 of the Code. Code section 203 provides that
22 if “an employer willfully fails to pay...any wages of an employee who is discharged or
23 who quits, the wages of the employee shall continue as a penalty from the due date
24 thereof at the same rate until paid or until an action therefor is commenced; but the wages
25 shall not continue for more than 30 days.”

26 Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon
27 their separation from Defendants’ employ. Accordingly, each Aggrieved Employee who
28 was not timely paid his or her final wages is entitled to civil penalties. Code § 2699(f)(2)

1 imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial
2 violations, and \$200 per pay period per Aggrieved Employee for subsequent violations
3 for all Code provisions for which a civil penalty is not specifically provided.

4 **Failure to provide itemized wage statements in violation of Code § 226(a).**

5 Aggrieved Employees have not been provided a wage statement as required by
6 Code section 226(a). The foregoing was the intentional misconduct of Defendants that
7 was intended to mislead and injure Aggrieved Employees insofar as they were subjected
8 to confusion and deprived of information to which they were legally entitled. Section
9 226(e) provides that any employee who suffers injury as a result of a knowing and
10 intentional failure by the employer to comply with its obligation to provide wage
11 statements containing all of the information referenced above is entitled to recover.
12 Section 226.3 provides for a civil penalty of \$250 per employee per violation in an initial
13 violation and \$1,000 per employee for each violation in a subsequent violation, for which
14 the employer fails to provide the employee a wage deduction statement or fails to keep
15 the records required in subdivision (a) of Section 226.

16 **Failure to provide proper meal periods under Code § 226.7 and IWC Wage**
17 **Order 5.**

18 Aggrieved Employees were not provided with timely meal periods in violation of
19 Code section 226.7 and IWC Wage Order 5. For example, Plaintiff worked over 5 or 10
20 hours in a day but was not provided with compliant meal breaks and was not otherwise
21 compensated.

22 Cal. Lab. Code §§ 226.7 and 512 require an employer to pay an additional hour of
23 compensation for each meal period the employer fails to provide. Employees are entitled
24 to a first meal period of at 30 minutes for shifts over 5 hours, to be provided within the
25 first 5 hours of the shift, and a second meal period of at least 30 minutes for shifts over 10
26 hours. If an employee is entitled to a second meal period, it must be provided after no
27 more than 10 hours of work. Here, Defendant failed to provide timely meal periods. Cal.
28 Lab. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved

1 Employee for initial violations, and \$200 per pay period per Aggrieved Employee for
2 subsequent violations for all Labor Code provisions for which a civil penalty is not
3 specifically provided.

4 **Failure to provide proper rest periods under Code § 226.7 and IWC Wage**
5 **Order 5.**

6 All Aggrieved Employees were not provided with timely rest periods in violation
7 of Code section 226.7 and IWC Wage Order 5. Plaintiff and Aggrieved Employees were
8 not provided with compliant rest breaks. Further, Plaintiff and the Aggrieved Employees
9 were not compensated with 1 hour of wages for each missed rest period as required by
10 Code § 226.7. Cal. Lab. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period
11 per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved
12 Employee for subsequent violations for all Code provisions for which a civil penalty is
13 not specifically provided.

14 **Failure to pay minimum and overtime wages in violation of Cal. Lab. Code §§**
15 **510, 515, 558, 1194, and 1198.**

16 Both late payment and non-payment of minimum wages violate the state statute
17 requiring the payment of a minimum hourly wage. The Labor Code requires an employer
18 to compensate its employees at the minimum wage rate for all hours worked and at a rate
19 of no less than one and one-half times the regular rate of pay for any work in excess of
20 eight hours in one workday and any work in excess of 40 hours in any one workweek.

21 Here, Plaintiff and other Aggrieved Employees were not paid at the proper
22 corresponding rate for all hours worked, including overtime because Defendant did not
23 use the correct overtime rate, did not record all actual hours and failed to pay for all time
24 worked and Aggrieved Employees were routinely required by Defendant to work “off the
25 clock.”

26 Cal. Lab. Code § 558 imposes a civil penalty in addition to any other penalty
27 provided by law of \$50 for initial violations for each underpaid employee for each pay
28 period for which the employee was underpaid in addition to an amount sufficient to

1 recover unpaid wages, and \$100 for subsequent violations for each underpaid employee
2 for each pay period for which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

6 1. Certification of Plaintiff's claims as a class action, pursuant to Code of Civil
7 Procedure section 382, on behalf of the proposed class.

8 2. That, with respect to the First Cause of Action, the Court enter judgment in
9 favor of Plaintiff and Class Members and against Defendant for payment of unpaid
10 minimum wages and/or overtime compensation, interest thereon, liquidated damages, and
11 reasonable attorneys' fees and costs of suit, according to proof.

12 3. That, with respect to the Second Cause of Action, the Court enter judgment
13 in favor of Plaintiff and the Class members and against Defendant NRC. That judgment
14 be entered in favor of Plaintiff in an amount according to proof, and costs and reasonable
15 attorneys' fees in accordance with the provisions of California Labor Code section
16 226(e). That judgment be entered in favor of putative Class members in an amount
17 according to proof, and costs and reasonable attorneys' fees in accordance with the
18 provisions of California Labor Code section 226(e).

19 4. That, with respect to the Third Cause of Action, the Court enter judgment in
20 favor of Plaintiff and Class Members and award an additional hour of pay for each
21 workday for which a meal period was not properly taken, reasonable attorney's fees and
22 costs of suit.

23 5. That, with respect to the Fourth Cause of Action, the Court enter judgment
24 in favor of Plaintiff and Class Members and award an additional hour of pay for each
25 workday for which a rest period was not properly taken, reasonable attorney's fees and
26 costs of suit.

27
28 6. That, with respect to the Fifth Cause of Action, the Court enter judgment in

1 favor of Plaintiff and Class Members and find that the failure of Defendant to make
2 payment of wages within the time prescribed by sections 201 and/or 202 of the California
3 Labor Code was “willful” within the meaning of section 203 of the California Labor
4 Code and that this Court award Plaintiff and Class Members continuing wages according
5 to proof.

6 7. That, with respect to the Sixth Cause of Action, Plaintiff be awarded the
7 statutory penalties provided by Labor Code section 226(b) in the amount of \$750 and for
8 reasonable attorneys’ fees and costs of suit pursuant to Labor Code section 226(f) and (g)
9 against Defendant.

10 8. That, with respect to the Seventh Cause of Action, Plaintiff be awarded the
11 statutory penalties provided by Labor Code section 1198.5(k) in the amount of \$750, as
12 well as injunctive relief to obtain compliance, and for reasonable attorneys’ fees and costs
13 of suit against Defendant.

14 9. That, with respect to the Eighth Cause of Action, the Court enter judgment
15 in favor of Plaintiff and Class Members and that it be adjudged that Defendant’s
16 violations of the California Labor Code and the applicable Wage Order violated section
17 17200 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiff
18 requests that the Court order Defendant to pay restitution to Plaintiff and Class Members.
19 Plaintiff also requests that the Court award Plaintiff her reasonable attorney’s fees and
20 costs incurred in the prosecution of the Ninth Cause of Action pursuant to section 1021.5
21 of the California Code of Civil Procedure.

22 10. That, with respect to the Ninth Cause of Action, that the Court enter
23 judgment in favor of Plaintiff and other aggrieved former and current employees their
24 civil penalties, attorney’s fees, and costs of suit, all according to proof, pursuant to
25 section 2699 of the Labor Code, against Defendant NRC.

26 11. For such other and further relief as this Court may deem fit and proper,
27 including reasonable attorney’s fees, costs of suit, and interest pursuant to sections 218.5
28 and 218.6 of the Labor Code, as well as pursuant to section 1021.5 of the Code of Civil

1 Procedure.

2 DATED: January 28, 2022

HARRIS & RUBLE

3 

4 Alan Harris

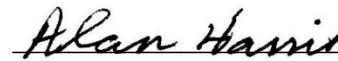
Attorneys for Plaintiff

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury as to all claims for relief.

8 DATED: January 28, 2022

HARRIS & RUBLE

9 

10 Alan Harris

Attorneys for Plaintiff

PROOF OF SERVICE

I am over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 North Central Avenue, 17th Floor, Glendale, California 91203. On January 28, 2022, I served the within documents:

FIRST AMENDED COMPLAINT

Hand Delivery: I caused such envelope to be delivered by hand in person to:

N/A

U.S. Mail: I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

N/A

Electronic Delivery: I caused such envelope to be delivered by e-mail to:

Kelly O. Scott (SBN 132186)

kscott@ecjlaw.com

Jared W. Slater (SBN 306226)

jslater@ecjlaw.com

ERVIN COHEN & JESSUP LLP

9401 Wilshire Boulevard, Ninth Floor

Beverly Hills, California 90212-2974

I declare under penalty of perjury that the above is true and correct. Executed on January 28, 2022, at Los Angeles, California.



Priya Mohan