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11 and on behalf of all others similarly situated.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 FOR THE COUNTY OF SACRAMENTO

15 EVA CANO GUTIERREZ, individually
16 and on behalf of all others similarly
17 situated,

18 Plaintiffs,

19 v.

20 RUSH PERSONNEL SERVICES, INC.;
21 SHASTA COUNTY PRIVATE
22 INDUSTRY COUNCIL; DIGNITY
23 HEALTH CONNECTED LIVING; and
24 DOES 1 through 20, inclusive,

25 Defendants.

Case No. 34-2021-00306760-CU-OE-GDS

Assigned to All Purposes:
Hon. Kevin R. Culhane
Dept. 37

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Wages Timely During Employment;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment; and
6. Violation of Business and Professions Code §§ 17200, *et seq.*
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Eva Cano Gutierrez, individually and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Eva Cano Gutierrez (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants Rush Personnel Services, Inc., Shasta County Private Industry
7 Council, Dignity Health Connected Living, and DOES 1 through 20, inclusive (collectively,
8 “Defendants”), on Plaintiff’s own behalf and on behalf of California citizens who are and were
9 employed by Defendants as non-exempt employees throughout California.

10 2. Defendants are in the staffing and hospitality industries.

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

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

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
- 18 (b) failing to pay wages weekly;
- 19 (c) failing to provide accurate itemized wage statements; and
- 20 (d) failing to pay all wages due upon separation of employment.

21 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all
22 others similarly situated in California to recover, among other things, unpaid wages, benefits,
23 interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 201.3,
24 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
25 1197.1, 1198, 2810.3, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

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JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants during the relevant time periods as alleged herein.

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

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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

Class

1 All California citizens currently or formerly employed by Defendants as non-
2 exempt employees in the State of California at any time between February 26,
3 2017¹ and the date of class certification (“Class”).

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

5 Waiting Time Subclass

6 All members of the Class who separated their employment with Defendant at any
7 time between February 26, 2018 and the date of class certification (“Waiting
8 Time Subclass”).

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

12 23. Members of the Class and the Waiting Time Subclass described above will be
13 collectively referred to as “Class Members.”

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

- 17 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
18 (including minimum wages and overtime wages) for all hours worked by
19 Plaintiff and Class Members.
- 20 (b) Whether Defendants required Plaintiff and Class Members to work over
21 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
22 (40) hours per week and failed to pay them proper overtime compensation
23 for all overtime hours worked.
- 24 (c) Whether Defendants paid Plaintiff and Class Members more than seven
25 days after the close of the pay period.

26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (d) Whether Defendants failed to pay Plaintiff and Class Members on a
2 weekly basis.
- 3 (e) Whether Defendants failed to provide Plaintiff and Class Members
4 accurate itemized wage statements.
- 5 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
6 wages due upon termination or within 72 hours of resignation.
- 7 (g) Whether Defendants' conduct was willful or reckless.
- 8 (h) Whether Defendants engaged in unfair business practices in violation of
9 Business and Professions Code §§ 17200, *et seq.*

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

12 (a) Numerosity: The Class Members are so numerous that joinder of all
13 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
14 on information and belief, the Class is estimated to be greater than fifty (50) individuals. The
15 identities of the Class Members are readily ascertainable by inspection of Defendants'
16 employment and payroll records.

17 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
18 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
19 provisions of California's wage and hour laws entitled each Class Member to similar pay,
20 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
21 sustained by the Class Members, because they arise out of and are caused by Defendants'
22 common course of conduct as alleged herein.

23 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
24 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
25 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
26 class counsel, are competent and experienced in litigating large employment class actions and
27 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
28 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and

1 costs that have been and will be necessarily expended for the prosecution of this action for the
2 substantial benefit of the Class Members.

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

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

16 **GENERAL ALLEGATIONS**

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

20 27. Defendants continue to employ non-exempt employees or employees within
21 California.

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

26 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and Class Members were entitled to receive wages for all time
28 worked (including minimum wages and overtime wages) and that they were not receiving all

1 wages earned for work that was required to be performed. In violation of the Labor Code and
2 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
3 wages and overtime wages) for all hours worked, including, but not limited to requiring Plaintiff
4 and Class Members to work off-the-clock, such as during temperature checks, and failing to
5 compensate Plaintiff and Class Members for these hours.

6 30. Defendants knew or should have known that they were required to pay Plaintiffs
7 and Class Members on a weekly basis. Plaintiffs and Class Members were staffed on a temporary
8 basis, for under ninety (90) days. Yet Plaintiffs and Class Members were not paid on a weekly
9 basis as required under Labor Code § 201.3. Defendants also sometimes paid Plaintiffs and Class
10 Members more than seven days after the close of the pay period.

11 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and Class Members were entitled to receive itemized wage
13 statements that accurately showed the following information pursuant to the Labor Code: (1)
14 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
18 which the employee is paid; (7) the name of the employee and only the last four digits of his or
19 her social security number or an employee identification number other than a social security
20 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at
22 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
23 were not provided with accurate itemized wage statements.

24 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
26 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
27 not receive payment of all wages within the permissible time periods.
28

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

34. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover, among other things, unpaid wages (including minimum wages and overtime wages), interest, attorneys' fees, penalties, costs, and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

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

36. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

37. Plaintiff and Class Members were employees entitled to the protections of Labor Code §§ 1194 and 1197.

38. During the relevant time period, Defendants failed to pay Plaintiff and Class Members all wages owed when Defendants did not pay for all hours worked, including, but not limited to, hours spent working off-the-clock.

39. During the relevant time period, Defendants failed to pay at least minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

40. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

1 41. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
2 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
3 interest thereon.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

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

7 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

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

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

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

22 46. California Labor Code § 510 codifies the right to overtime compensation at one
23 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
24 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
25 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
26 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
27 seventh day of work in a workweek.

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

4 48. Plaintiff and Class Members were employees entitled to the protections of
5 California Labor Code §§ 510 and 1194.

6 49. During the relevant time period, Defendants required Plaintiff and Class Members
7 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
8 consecutive day of work, entitling them to overtime wages.

9 50. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members overtime wages for all overtime hours worked when Defendants failed to pay for time
11 spent working off-the-clock. To the extent these hours qualify for the payment of overtime
12 wages, Plaintiff and Class Members were not paid proper overtime wages.

13 51. In violation of California law, Defendants knowingly and willfully refused to
14 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
15 all hours worked.

16 52. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
17 overtime compensation, as required by California law, violates the provisions of Labor Code §§
18 510 and 1198, and is therefore unlawful.

19 53. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
20 recover their unpaid overtime and double time compensation as well as interest, costs, and
21 attorneys' fees.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

24 (Violation of Labor Code §§ 201.3, 204, 210)

25 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

27 55. Pursuant to California Labor Code § 201.3, certain types of employees must be
28 paid their wages on a weekly basis.

56. Pursuant to California Labor Code § 204, employees paid on a biweekly basis must be paid within seven days of the close of the pay period.

57. During the relevant time period, Defendants employed Plaintiff and Class Members on a temporary basis but failed to pay them on a weekly basis in accordance with Labor Code § 201.3.

58. Further, Defendants sometimes paid Plaintiffs and Class Members more than seven days after the close of the pay period.

59. Such a pattern, practice and uniform administration of corporate policy regarding timely payment of wages as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201.3, 203, and 210.

60. As a direct and proximate cause of these violations, Class Members have been damaged, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

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

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

1 rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee.

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

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

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

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

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

4 **FIFTH CAUSE OF ACTION**

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

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

7 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

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

15 69. During the relevant time period, Defendants willfully failed to pay the Waiting
16 Time Subclass all their earned wages upon termination, including, but not limited to, proper
17 minimum wage and overtime compensation, either at the time of discharge or within seventy-two
18 (72) hours of their leaving Defendants' employ.

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

22 71. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
23 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
24 the wages of the employee shall continue as a penalty from the due date at the same rate until
25 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)
26 days.

27 72. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
28 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'

1 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
2 maximum of thirty (30) days.

3
4 **SIXTH CAUSE OF ACTION**

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

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

7 73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 74. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
10 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .
11 . .”

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

16 76. Defendants’ policies and practices violated state law in at least the following
17 respects:

- 18 (a) Failing to pay all wages earned (including minimum wage and overtime
19 wages) to Plaintiff and Class Members at the proper rate in violation of
20 Labor Code §§ 510, 1194, 1194.2, 1197, and 1198.
- 21 (b) Failing to timely pay Plaintiff and Class Members in violation of Labor
22 Code §§ 201.3 and 204.
- 23 (c) Failing to provide Plaintiff and Class Members with accurate itemized
24 wage statements in violation of Labor Code § 226.
- 25 (d) Failing to timely pay all earned wages to the members of the Waiting
26 Time Subclass upon separation of employment in violation of Labor Code
27 §§ 201, 202, and 203.
- 28

77. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages (minimum and overtime wages), failing to pay wages weekly, failing to furnish accurate wage statements, and failing to pay all wages due and owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs of doing business and increase their profits.

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

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

80. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

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

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

SEVENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* (“PAGA”)

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

1 84. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or
4 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
5 action brought by an aggrieved employee on behalf of himself or herself and other current or
6 former employees pursuant to the procedures specified in Labor Code § 2699.3.

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

12 86. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
13 including, but not limited to, the following:

- 14 a. violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 510, 1182.12,
15 1194, 1197, 1197.1, 1198, and 2810.3 for failure to timely pay all earned
16 wages (including minimum wage and overtime wages) owed to Plaintiff
17 and other aggrieved employees during employment and upon separation
18 of employment as herein alleged;
- 19 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
20 periods to Plaintiff and other aggrieved employees and failure to pay
21 premium wages for missed meal periods as herein alleged;
- 22 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
23 Plaintiff and other aggrieved employees and failure to pay premium
24 wages for missed rest periods as herein alleged;
- 25 d. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
26 itemized wage statements to Plaintiff and other aggrieved employees as
27 herein alleged; and
28

1 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
2 accurate and complete records showing, among other things, the hours
3 worked daily by and the wages paid to aggrieved employees.

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

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

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

13 90. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
14 herein.

15 **PRAYER FOR RELIEF**

16 On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays
17 for relief and judgment against Defendants, jointly and severally, as follows:

- 18 1. For certification under California Code of Civil Procedure § 382 of the proposed
19 Class and any other appropriate subclass;
- 20 2. For appointment of Eva Cano Gutierrez as class representative;
- 21 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
- 22 4. For compensatory damages in an amount according to proof at trial;
- 23 5. For an award of damages in the amount of unpaid compensation including, but
24 not limited to, unpaid wages, benefits, and penalties;
- 25 6. For economic and/or special damages in an amount according to proof at trial;
- 26 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 27 8. For statutory penalties to the extent permitted by law, including those pursuant to
28 the Labor Code and IWC Wage Orders;

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

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

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

8 12. For pre-judgment interest;

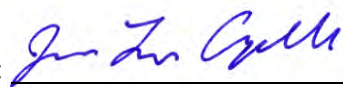
9 13. For civil penalties;

10 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
11 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
12 226(e), 1194, and 2698 *et seq.*; and

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

14
15 Dated: November 22, 2021

AEGIS LAW FIRM, PC

16
17 By: 
18 Jessica L. Campbell
Attorneys for Plaintiff Eva Cano Gutierrez

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

22
23 Dated: November 22, 2021

AEGIS LAW FIRM, PC

24
25 By: 
26 Jessica L. Campbell
Attorneys for Plaintiff Eva Cano Gutierrez