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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF EL DORADO**

KARLA TYSON, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

SUMMITVIEW CHILD & FAMILY  
SERVICES, INC., a California Corporation; and  
DOES 1-50, inclusive.

Defendants.

CASE NO.: PC20210500

**FIRST AMENDED CLASS ACTION AND  
PAGA COMPLAINT:**

- (1) FAILURE TO PAY OVERTIME  
WAGES;
- (2) MEAL PERIOD VIOLATIONS;
- (3) REST PERIOD VIOLATIONS;
- (4) FAILURE TO REIMBURSE FOR  
NECESSARY BUSINESS  
EXPENDITURES;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

**DEMAND FOR JURY TRIAL**

**FILED**

**MAR 30 2022**

**EL DORADO CO. SUPERIOR COURT  
BY L. Vogel (DEPUTY)**

BY FAX

1 Plaintiff Karla Tyson (“Plaintiff”) on behalf of herself, and all other similarly situated non-  
2 exempt employees, alleges and complains of defendants Summitview Child & Family Services, Inc.  
3 (“Defendants”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

#### 4 **INTRODUCTION**

5 1. Defendants are a private, nonprofit corporation operating a large residential facility  
6 which provides mental health and other care to children and adults in Placerville, California. Plaintiff  
7 brings this class action against Defendants for alleged violations of the California Labor Code and  
8 Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to  
10 properly calculate non-exempt employees’ overtime rate by failing to include all forms of non-  
11 discretionary compensation in calculating the “regular rate of pay.” As a result, Plaintiff and other  
12 similarly situated employees were not paid overtime at the correct overtime rate. Further, Plaintiff  
13 alleges that Defendants’ meal and rest period policies and practices failed to provide her and all other  
14 similarly situated employees with compliant meal and rest periods or pay premium pay at the “regular  
15 rate of pay” in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt  
16 employees with accurate written itemized wage statements and failed to timely pay all final wages  
17 upon separation of employment. Finally, Plaintiff alleges that Defendants failed to reimburse her and  
18 other non-exempt employees for necessary business expenditures, specifically a reasonable portion  
19 of their monthly cellular phone bills.

20 3. Based on these alleged Labor Code violations, Plaintiff now brings this class and  
21 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief  
22 on behalf of herself and all others similarly situated.

#### 23 **JURISDICTION AND VENUE**

24 4. This class action is brought pursuant to California Code of Civil Procedure § 382.

25 5. Plaintiff, on behalf of herself and all others similarly situated employees hereby brings  
26 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 200,  
27 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802,  
28 2698, et seq., and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in

1 addition to seeking declaratory relief and restitution pursuant to California Business and Professions  
2 Code § 17200, *et. seq.*

3 6. This Court has jurisdiction over Defendants' violations of the California Labor Code  
4 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional  
5 minimum.

6 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure  
7 §§ 395(a) and 395.5, as Defendants have their principal place of business in El Dorado County.  
8 Defendants own, maintain offices, transact business, have an agent or agents within the County of El  
9 Dorado, and/or otherwise are found within the County of El Dorado, and Defendants are within the  
10 jurisdiction of this Court for purposes of service of process.

11 **PARTIES**

12 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is  
13 a California resident residing in the State of California. Defendants employed Plaintiff as a non-  
14 exempt employee in Placerville, California in the County of El Dorado.

15 9. Plaintiff is informed and believes and thereon alleges that defendant Defendants Child  
16 & Family Services, Inc., is a corporation authorized and doing business in El Dorado County,  
17 California; and is and/or was the legal employer of Plaintiff and the Class Members during the  
18 applicable statutory periods.

19 10. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other  
20 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§  
21 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, and  
22 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

23 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years  
24 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to  
25 do) business in the State of California, County of El Dorado. Defendants, each of them, own and/or  
26 operate in Placerville, California.

27 12. Plaintiff does not know the true names or capacities, whether individual, partner, or  
28 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and  
3 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or  
4 corporate, were responsible in some manner for the acts and omissions alleged herein, and  
5 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices  
6 alleged herein.

7 13. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned  
8 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all  
9 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter  
10 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of  
11 them, were the agents, servants, and employees of each and every one of the other Defendants, as  
12 well as the agents of all Defendants, and at all times herein mentioned were acting within the course  
13 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,  
14 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

15 14. At all times mentioned herein, Defendants, and each of them, were members of and  
16 engaged in a joint venture, partnership, and common enterprise, and acting within the course and  
17 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff  
18 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the  
19 Classes.

#### 20 **COMMON FACTUAL ALLEGATIONS**

21 15. Defendants provide a variety of mental health and residential care services to  
22 individuals with disabilities, ranging from tutoring, feeding, monitoring, and other mental health and  
23 support services in California.

24 16. Plaintiff was employed by Defendants as a non-exempt Mental Health Specialist II  
25 employee from approximately March 8, 2021, until her termination on or about August 5, 2021.  
26 Plaintiff and other non-exempt employees of Defendants were responsible for all aspects of  
27 Defendants' mental health, education, and care services.

1           17.     At all relevant times, Defendants failed to pay and continue to fail to pay the correct  
2 overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours  
3 per workweek. While Plaintiff and other non-exempt employees regularly worked overtime hours,  
4 they were not compensated at one and one-half times their regular rate of pay because Defendants  
5 failed to include all forms of compensation, including, but not limited to, non-discretionary bonuses  
6 and other forms of compensation or remuneration when calculating the regular rate of pay used in  
7 overtime calculations.

8           18.     For instance, although Defendants consistently paid its employees non-discretionary  
9 bonuses, Defendants omitted these payments when calculating the regular rate of pay used in  
10 overtime calculations and when paying overtime to Plaintiff and the other non-exempt employees.

11           19.     Under the California Labor Code (as well as the FLSA), courts have held that regularly  
12 paid non-discretionary pay and bonuses must be included in determining an employee's "regular rate  
13 of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-  
14 856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating  
15 the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal.  
16 2006) [granting summary judgement to Plaintiff under California and federal law on the grounds, that  
17 Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the  
18 "regular rate of compensation"].)

19           20.     Labor Code § 510 requires an employer to compensate an employee who works more  
20 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours  
21 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of  
22 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than  
23 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or  
24 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the  
25 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in  
26 any workday or more than 40 hours in any workweek unless the employee receives one and one-half  
27 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

1           21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed  
2 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of  
3 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,  
4 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee  
5 is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred  
6 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is  
7 underpaid regardless of whether the initial violation is intentionally committed.

8           22. By their policy of requiring Plaintiff and the other non-exempt employees to work in  
9 excess of eight (8) hours in a workday or forty (40) hours in a workweek without compensating them  
10 at the rate of one-half (11/2) their regular rate of pay, Defendants willfully violated the provisions of  
11 Labor Code § 510 and the applicable Wage Orders.

12           23. Furthermore, at all relevant times, Plaintiff and other non-exempt employees regularly  
13 worked shifts in excess of 6.0 hours, and often shifts in excess of 10.0 hours, but were not provided  
14 with legally compliant meal periods of at least thirty (30) minutes before the end of the fifth and tenth  
15 hour of work due to Defendants' uniform meal period policy/practices.

16           24. Defendants' meal period policies/practices fail to comply with the California Labor  
17 Code for several reasons. First, Plaintiff and other non-exempt employees are not provided with 30-  
18 minute meal periods, even if on-duty, per the applicable Wage Order and relevant case law. *See,*  
19 *L'Chaim House, Inc. et al. v. Division of Labor Standards Enforcement* (2019) 38 Cal. App. 5th 141;  
20 *See also,* IWC Wage Order 5-2001 § 11. For example, in *L'Chaim House*, the Court of Appeal  
21 concluded that a residential care employee subject to subdivision 11(E) of Wage Order No. 5 "is still  
22 entitled to a **30-minute** meal period even though that meal period may be on-duty instead of off-  
23 duty." *Id.* (emphasis added) Indeed, Plaintiff alleges that she and other non-exempt employees were  
24 not provided legally complaint on-duty meal periods of at least thirty (30) minutes.

25           25. Additionally, the meal period policy as applied to non-exempt employees not subject  
26 to subdivision 11(E) of Wage Order No. 5, fails to articulate by when the first meal period is to be  
27 taken, and fails to provide for a second meal period for shifts lasting 10.0 hours or longer.

1           26. Labor Code § 226.7 provides “an employer shall not require an employee to work  
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Wage Order 5,  
4 subsection 11, modifies this order to allow an on-duty meal period, provided that it is before the end  
5 of the 5th hour and at least 30 minutes. IWC Wage Order 5-2001 § 11(A). Pursuant to Labor Code  
6 section 226.7 and the applicable Wage Order, each failure to provide a compliant meal period entitles  
7 Plaintiff and other non-exempt employees to receive an additional compensation premium equal to  
8 the “regular rate of pay.”

9           27. As such, the applicable Wage Order obligates Defendants to provide Plaintiff and  
10 other non-exempt employees “one (1) hour of pay at the employee’s regular rate of compensation for  
11 each workday that the meal period is not provided.” Accordingly, for each time that Plaintiff and  
12 other non-exempt employees did not receive compliant meal periods, they are entitled to receive meal  
13 period premiums pursuant to Labor Code § 226.7. As a result of Defendants’ unlawful meal period  
14 policy/practices, Plaintiff seeks to recover on behalf of herself and all non-exempt employees’ meal  
15 period premiums and penalties under Labor Code § 226.7 and § 512.

16           28. Next, at all relevant times, Defendants failed and continue to fail to authorize and  
17 permit Plaintiff and other non-exempt employees from taking all rest periods in compliance with the  
18 California Labor Code. Plaintiff and other non-exempt employees are and were regularly unable to  
19 take all legally complaint rest periods due to the demands of the job, interruption by supervisors, and  
20 staffing shortages. This includes a second rest period for shifts in excess of six hours, and a third rest  
21 period for shifts in excess of 10 hours in a workday.

22           29. Additionally, as it pertains to non-exempt employees subject to subdivision 12(c) of  
23 Wage Order No. 5, Defendants, in practice failed to ensure that Plaintiff and other non-exempt  
24 employees received additional rest periods when theirs were affirmatively interrupted by supervision  
25 duties, which was a frequent occurrence. As a result, Plaintiff and other non-exempt employees were  
26 and are routinely not authorized and permitted to take “another rest period. . .when an employee is  
27 affirmatively required to interrupt his/her break to respond to the needs of residents.” (*See* Section  
28 12(c) of Wage Order No. 5.)

1           30. By not providing replacement rest breaks after affirmatively requiring Plaintiff and  
2 other non-exempt employees to interrupt their breaks, Defendants routinely violated Wage Order 5  
3 subsection 12(c). Each time Plaintiff and other non-exempt employees were unable to take a  
4 compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium  
5 payments at the “regular rate of pay” as required by Labor Code § 226.7.

6           31. As a result of Defendants’ unlawful rest period policy/practices, Plaintiff seeks to  
7 recover on behalf of herself and all non-exempt employees’ meal period premiums, rest period  
8 premiums, and penalties under Labor Code § 226.7 and § 512.

9           32. Moreover, at all relevant times, Plaintiff and other non-exempt employees, at the  
10 direction of Defendants and/or with Defendants’ knowledge and acquiescence, have used their  
11 personal cell phones in the discharge of their duties, and for work-related purposes including, but not  
12 limited to, clocking in and out for shifts on an application required to be downloaded by non-exempt  
13 employees. Additionally, Defendants required Plaintiff and other non-exempt employees respond to  
14 phone calls and text messages and expect these employees to initiate calls and texts to meet  
15 Defendants’ business needs. However, Defendants required Plaintiff and other non-exempt  
16 employees to incur the costs associated with business use of their personal cell phones and did not  
17 provide any reimbursement of these costs.

18           33. Pursuant to Labor Code 2802 and the applicable Wage Orders, Defendants must  
19 reimburse Plaintiff and the other non-exempt employees for a reasonable portion of their monthly  
20 personal cell phone bills and expenses necessarily incurred in their discharge of their duties. (*See*  
21 *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when  
22 employees must use their personal cell phones for work-related calls, Labor Code section 2802  
23 requires the employer to reimburse them. Whether the employees have cell phone plans with  
24 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their  
25 cell phone bills.”) (reversing denial of class certification in cell phone reimbursement class action  
26 and setting forth the applicable law for these claims); *See also Aguilar v. Zep, Inc.*, 2014 WL 4245988  
27 \*17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on the Mr. Toys’ cell  
28 phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at \*21 (N.D.

1 Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

2 34. As a result of Defendants' failure to reimburse for necessary business expenses,  
3 Plaintiff seeks to recover on behalf of herself and all non-exempt employees' unreimbursed expenses  
4 and penalties under Labor Code § 2802-2804.

5 35. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for  
6 all hours they were subject to the control of Defendants, and failure to pay for all meal and rest period  
7 premiums at the "regular rate of pay" for missed/non-compliant meal/rest periods, Defendants issued  
8 wage statements which failed to accurately identify the gross wages earned, the total hours worked,  
9 the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in  
10 violation of Labor Code §226(a) (1, 2, 5, and 9).

11 36. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of  
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for  
14 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
15 deduction statement or fails to keep the required in subdivision (a) of Section 226."

16 37. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other  
17 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of  
18 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-  
19 exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, and 9). Consequently, because  
20 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and  
21 other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e)

22 38. Finally, because of, Defendants' failure to pay all overtime wages, and meal/rest  
23 period premiums at the "regular rate of pay" for non-complaint meal/rest periods, Defendants also  
24 failed and continue to fail to pay other non-exempt employees all wages owed and due at their time  
25 of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.

26 **CLASS ACTION ALLEGATIONS**

27 39. Plaintiff brings this action on behalf of herself and the following Classes pursuant to  
28 § 382 of the Code of Civil Procedure:

1 All non-exempt employees who work or worked for Defendants in California, during  
2 the four years immediately preceding the filing of the Complaint through the date of  
trial. ("Class");

3 All non-exempt employees who worked for Defendants in California and who  
4 worked overtime hours during at least one shift and earned a non-  
5 discretionary bonus payment and/or other non-hourly pay, during the four years  
immediately preceding the filing of the Complaint through the date of trial.  
6 ("Overtime Subclass");

7 All employees who work or worked for Defendants in California, and who left their  
8 employ during the three years immediately preceding the filing of the Complaint  
through the date of trial. ("Waiting Time Penalty Subclass")  
9 (collectively "the Classes")

10 40. **Numerosity/Ascertainability:** The members of the Classes are so numerous that  
11 joinder of all members would be unfeasible and not practicable. The membership of the Classes is  
12 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one  
13 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of  
14 Defendants' employment and payroll records.

15 41. **Common Questions of Law and Fact Predominate/Well Defined Community of**  
16 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated  
17 employees, which predominate over questions affecting only individual members including, without  
18 limitation to:

19 1. Whether Defendants failed to pay overtime at the appropriate legal rate to members  
20 of the Classes;

21 2. Whether Defendants provided legally compliant meal and rest periods or proper  
22 compensation at the "regular rate of pay" in lieu thereof to members of the Classes;

23 3. Whether Defendants furnished legally compliant wage statements to members of the  
24 Classes pursuant to Labor Code § 226(a);

25 4. Whether the timing and amount of payment of final wages to members of the Class at  
26 the time of separation from employment were unlawful; and

27 5. Whether Defendants properly reimbursed members of the Classes for all necessary  
28 business expenditures.

1           42.     **Predominance of Common Questions:** Common questions of law and fact  
2 predominate over questions that affect only individual members of the Classes. The common  
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
4 and/or practices applicable to each individual class member, such as Defendants' policy/practice of  
5 failing to pay overtime at the appropriate premium rate, Defendants' uniform policy of failing to  
6 provide complaint meal and rest periods or adequate compensation in lieu thereof, Defendants'  
7 uniform policy of failing to compensate non-exempt employees for their cell phone expenses incurred  
8 at the behest of Defendants, and Defendants' resulting failure to provide accurate itemized wage  
9 statements, and to pay for all wages due upon separation of employment. As such, the common  
10 questions predominate over individual questions concerning each individual class member's showing  
11 as to his or her eligibility for recovery or as to the amount of his or her damages.

12           43.     **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because  
13 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)  
14 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,  
15 Plaintiff, like the members of the Classes was deprived of overtime wages, was deprived of meal and  
16 rest period premium wages, was subject to Defendants' uniform meal and rest period  
17 policies/practices, was not reimbursed for required work related expenses, was not provided accurate  
18 itemized wage statements, and was not paid all wages owed at the time of her separation of  
19 employment.

20           44.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to  
21 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's  
22 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.  
23 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions  
24 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the  
25 members of the Classes.

26           45.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
27 important public interest in establishing minimum working conditions and standards in California.  
28 These laws and labor standards protect the average working employee from exploitation by

employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

46. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 37 are maintainable as Classes under § 382 of the Code of Civil Procedure.

### FIRST CAUSE OF ACTION

## FAILURE TO PAY ALL OVERTIME WAGES

**(AGAINST ALL DEFENDANTS)**

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for

1 overtime work performed.

2       49. At all times relevant herein, Defendants were required to properly pay Plaintiff and  
3 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code  
4 § 1194 and the applicable Wage Orders.

5       50. Section 3 of the applicable Wage Order requires an employer to pay an employee “one  
6 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per  
7 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an  
8 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve  
9 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in  
10 the workweek.

11       51. Defendants failed to conform their pay practices to the requirements of the law. This  
12 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of  
13 failing to include all forms of compensation including, but not limited to, non-discretionary bonuses,  
14 in calculating the “regular rate of pay” for purposes of paying overtime, which resulted in the Classes  
15 not being paid all overtime wages owed.

16       52. The foregoing policies and practices are unlawful and create entitlement to recovery  
17 by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of  
18 overtime wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit  
19 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code  
20 of Civil Procedure § 1021.5.

21                                   **SECOND CAUSE OF ACTION**

22                                   **MEAL PERIOD VIOLATIONS**

23                                   **(AGAINST ALL DEFENDANTS)**

24       53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25       54. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in  
26 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff  
27 and members of the Class, with all required meal periods in accordance with the mandates of the  
28 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common

1 Allegations section of this Complaint.

2 55. As a result, Defendants are responsible for paying premium compensation for meal  
3 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the  
4 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

5 **THIRD CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 57. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish  
10 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for  
11 each four (4) hour period worked, or major fraction thereof.

12 58. Due to their unlawful rest period policy and practices, Defendants did not authorize  
13 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were  
14 legally entitled, including, but not limited to, failing to provide non-exempt employees with a  
15 replacement rest period when their rest period was affirmatively interrupted by Defendants. Despite  
16 Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of  
17 pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation,  
18 in accordance with California Labor Code § 226.7.

19 59. The foregoing violations create an entitlement to recovery by Plaintiff and members  
20 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest  
21 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§  
22 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE FOR CELL PHONE USAGE**

25 **(AGAINST ALL DEFENDANTS)**

26 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 61. Labor Code 2802(a) states in pertinent part the following:  
28

1 “(a) An employer shall indemnify his or her employee for all necessary  
2 expenditures or losses incurred by the employee in direct consequence of  
3 the discharge of his or her duties, or of his or her obedience to the directions  
4 of the employer, even though unlawful, unless the employee, at the time of  
obeying the directions, believed them to be unlawful.”

5 62. As set forth above, Plaintiff and members of the Class must be compensated for all  
6 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly  
7 personal cell phone bills necessarily incurred in their discharge of their duties. (See *Cochran v.*  
8 *Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use  
9 their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to  
10 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited  
11 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v.*  
12 *Zep, Inc.*, 2014 WL 4245988 \*17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary  
13 judgment on Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014  
14 WL 6982943, at \*21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and  
15 adopting the logic of *Cochran*).

16 63. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary  
17 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the  
18 applicable Wage Orders.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(AGAINST ALL DEFENDANTS)**

22 64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 65. Labor Code 226(a) states in pertinent part the following:

24 “(a) An employer, semimonthly or at the time of each payment of wages, shall  
25 furnish to his or her employee, either as a detachable part of the check, draft, or  
26 voucher paying the employee’s wages, or separately if wages are paid by personal  
27 check or cash, an accurate itemized statement in writing showing (1) gross wages  
28 earned, (2) total hours worked by the employee, except as provided in subdivision  
(j), (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

1 deductions made on written orders of the employee may be aggregated and shown  
2 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
3 employee is paid, (7) the name of the employee and only the last four digits of his  
4 or her social security number or an employee identification number other than a  
5 social security number, (8) the name and address of the legal entity that is the  
6 employer and, if the employer is a farm labor contractor, as defined in subdivision  
7 (b) of Section 1682, the name and address of the legal entity that secured the services  
8 of the employer, and (9) all applicable hourly rates in effect during the pay period  
9 and the corresponding number of hours worked at each hourly rate by the  
10 employee.”

11 66. As set forth above, during the Class Period, Defendants issued and continue to issue  
12 wage statements to its employees including Plaintiff and members of the Classes, which are  
13 inadequate under Labor Code Section 226(a).

14 67. As a result of Defendants failure to pay Plaintiff and the Classes for all overtime wages  
15 at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include  
16 required information on Plaintiff and the Classes’ wage statements, including, but not limited to, the  
17 gross wages earned, the net wages earned in violation of Labor Code section 226(a).

18 68. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and  
19 intentional.

20 69. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff  
21 and members of the Classes in violation of section 226(a) of the California Labor Code, Plaintiff and  
22 members of the Classes are each entitled to recover an initial penalty of \$50, and subsequent penalties  
23 of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every  
24 member of the Classes from Defendants pursuant to section 226(e) of the Labor Code, costs and  
25 reasonable attorneys’ fees.

## 26 **SIXTH CAUSE OF ACTION**

### 27 **WAITING TIME PENALTIES**

#### 28 **(AGAINST ALL DEFENDANTS)**

70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

71. The actionable period for this cause of action is three years prior to the filing of this  
Complaint through the present, and on-going until the violations are corrected, or the class is certified.

72. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

73. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

74. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time Penalty Subclass for all hours worked, including all minimum and overtime wages, and their meal and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

75. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Classes pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

### **SEVENTH CAUSE OF ACTION**

## UNFAIR COMPETITION

**(AGAINST ALL DEFENDANTS)**

76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

77. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all overtime wages at the appropriate legal rate, by failing to provide all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, by failing to reimburse employees for all necessary business expenses, and by failing to pay all earned wages at the time of separation from employment.

78. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to

1 do so in honest compliance with applicable wage and hour laws.

2 79. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged  
3 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of  
4 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or  
5 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

6 80. The acts complained of herein occurred within the last four years immediately  
7 preceding the filing of the Complaint in this action.

8 81. Plaintiff was compelled to retain the services of counsel to file this court action to  
9 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of  
10 Defendants' current hourly non-exempt employees and to enforce important rights affecting the  
11 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which  
12 he is entitled to recover under Code of Civil Procedure § 1021.5.

13 **EIGHT CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(Labor Code § 2698 et seq.)**

16 **(AGAINST ALL DEFENDANTS)**

17 82. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 83. Defendants have committed several Labor Code violations against Plaintiff and other  
19 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698  
20 et seq., acting on behalf of herself and other non-exempt employees, bring this representative action  
21 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt  
22 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)  
23 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent  
24 violation per employee per pay period for those violations of the Labor Code for which no civil  
25 penalty is specifically provided based on the following Labor Code violations:

26 a. Failing to provide Plaintiff and other non-exempt employees all overtime  
27 compensation at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;

28 b. Failing to provide Plaintiff and other non-exempt employees with all of their

1 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in  
2 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

3 c. Failing to authorize and permit Plaintiff and other non-exempt employees with all  
4 of their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof  
5 in violation of Labor Code §§ 226.7, and 516;

6 d. Failing to reimburse Plaintiff and other non-exempt employees for all necessary  
7 business expenditures in violation of Labor Code §§ 2800 and 2802

8 e. Failing to timely compensate Plaintiff and other non-exempt employees with all  
9 earnings at their separation of employment in violation of Labor Code §§ 201-203.

10 f. Failing to furnish Plaintiff and other non-exempt employees with complete,  
11 accurate, itemized wage statements in violations of Labor Code § 226(a); and

12 84. On or about September 9, 2021, Plaintiff notified Defendant Summitview Child &  
13 Family Services, Inc., via certified mail, and the California Labor and Workforce Development  
14 Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 et  
15 seq., with respect to violations of the California Labor Code identified in Paragraph 77(a)-(e). Now  
16 that sixty-five days have passed from Plaintiff notifying Defendant and the LWDA of these  
17 violations, Plaintiff will have exhausted her administrative requirements for bringing a claim under  
18 the Private Attorneys General Act with respect to these violations.

19 85. Plaintiff was compelled to retain the services of counsel to file this court action to  
20 protect their interests and the interests of other non-exempt employees, and to assess and collect the  
21 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which she  
22 is entitled to receive under California Labor Code § 2699.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf  
25 this suit is brought against Defendants, as follows:

- 26 1. For an order certifying the proposed Classes;  
27 2. For an order appointing Plaintiff as representative of the Classes;  
28 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1           4.       Upon the First Cause of Action, for compensatory, consequential, general and special  
2 damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

3           5.       Upon the Second Cause of Action, for compensatory, consequential, general and  
4 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

5           6.       Upon the Third Cause of Action, for compensatory, consequential, general and special  
6 damages according to proof pursuant to Labor Code §§ 226.7 and 516;

7           7.       Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 2208, and  
8 reasonable costs and attorneys' fees;

9           8.       Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and  
10 reasonable costs and attorneys' fees;

11          9.       Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor  
12 Code §§ 201-203.

13          10.      Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the  
14 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or  
15 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

16          11.      Upon the Eight Cause of Action, for civil penalties due to Plaintiff, other non-exempt  
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699  
18 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each  
19 subsequent violation per employee per pay period for those violations of the Labor Code for which  
20 no civil penalty is specifically provided under the Labor Code;

21          12.      Prejudgment interest on all due and unpaid wages pursuant to California Labor Code  
22 § 218.6 and Civil Code §§ 3287 and 3289;

23          13.      On all causes of action, for attorneys' fees and costs as provided by Labor Code §§  
24 218.5, 226, and Code of Civil Procedure § 1021.5; and

25          14.      For such other relief that the Court may deem just and proper.  
26  
27  
28

1 Dated: February 24, 2022

**FALAKSSA LAW, P.C.**  
**BOKHOUR LAW GROUP, P.C.**

2  
3  
4 By: \_\_\_\_\_

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Anwar D. Burton

Attorneys for Plaintiff and the Putative Classes

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On February 24, 2022, I served the following document(s) described as **JOINT STIPULATION TO FILE FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT; [PROPOSED] ORDER** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Ronald E. Enabnit, Esq.  
[renabnit@mathenysears.com](mailto:renabnit@mathenysears.com)  
MATHENY, SEARS, LINKERT, JAIME, LLP  
3638 American River Drive  
Sacramento, California 95864

**Counsel for defendant Summitview  
Child & Family Services, Inc.**

**BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2022, at Los Angeles, California.

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Carlos Garcia