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12 *An Aggrieved Employee of Defendants,*
13 *on Behalf of the State of California's*
Labor and Workforce Development Agency
for All Aggrieved Employees of Defendants

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO**

16
17 MARGARITA GOMEZ JIMENEZ, An
18 Aggrieved Employee of Defendants, on Behalf
19 of the State of California's Labor and
Workforce Development Agency for All
Aggrieved Employees of Defendants,

20 Plaintiff,

21 v.

22 OLIVE HOLDINGS, LLC, a California
23 Limited Liability Corporation; and DOES 1-
100, Inclusive,

24 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/12/2021 at 07:32:04 PM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

Case No. 37-2021-00048293-CU-OE-CTL

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff MARGARITA GOMEZ JIMENEZ (hereinafter, “Plaintiff”), who is an aggrieved
2 employee of Defendant OLIVE HOLDINGS, LLC, and DOES 1 through 100, inclusive,
3 (collectively, “Defendants”), brings this representative action as proxy for the State of California’s
4 Labor and Workforce Development Agency (“LWDA”) on behalf of all current and former
5 aggrieved employees of Defendants in California, and hereby alleges the following facts and
6 claims against Defendants, and respectfully request civil penalties, all other available relief, and a
7 trial by jury of all issues and causes of action so triable.

8 INTRODUCTION

9 1. Plaintiff brings this representative action as the proxy for the State of California’s
10 LWDA against Defendants for civil penalties pursuant to California’s Private Attorneys General
11 Act of 2004 (hereinafter, the “PAGA”), Labor Code section 2698, *et seq.*, resulting from
12 Defendants’ violations of “wage and hour” laws protective of Defendants’ aggrieved employees
13 under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.
14 The PAGA permits an aggrieved employee to bring a representative action as the State’s
15 designated proxy on behalf of herself and all other current and former non-exempt aggrieved
16 employees of an employer to recover civil penalties for violation of California’s Labor Code.

17 2. Defendants’ systemic pattern of Labor Code and IWC Wage Order violations
18 toward Plaintiff and other current and former aggrieved employees of Defendants in California
19 include, but are not limited to their:

- 20 a. Failure to compensate for all hours worked in violation of Labor Code
21 sections 1194, 1197, and 1198;
- 22 b. Failure to compensate for all overtime in violation of Labor Code section
23 510;
- 24 c. Failure to provide meal periods and/or premium pay for non-compliant
25 meal periods in violation of Labor Code sections 226.7, 512, 558, 1198, and
26 1199 and Section 11 of the IWC Wage Order(s);
- 27 d. Failure to authorize and permit all paid rest periods and/or provide premium
28 pay for non-compliant rest periods in violation of Labor Code sections

- 1 226.7, 1197, 1198, and 1199, and Section 12 of the IWC Wage Order(s);
- 2 e. Failure to furnish accurate itemized wage statements in violation of Labor
- 3 Code section 226(a); and
- 4 f. Failure to timely pay all final wages owed upon separation of employment
- 5 in violation of Labor Code sections 201, 202, and 203.

6 3. Pursuant to PAGA, Plaintiff seeks to recover civil penalties, costs and attorney's

7 fees, and all other available relief for Defendants' violations of the Labor Code, as alleged herein.

8 **PARTIES**

9 4. Plaintiff MARGARITA GOMEZ JIMENEZ is an individual over the age of

10 eighteen (18). Plaintiff is and, at all relevant times mentioned in this Complaint, was a California

11 citizen residing within San Diego County, California. Plaintiff was employed by Defendants in as

12 a non-exempt Certified Nursing Assistant at its Aviara Healthcare Center located at 944 Regal Rd,

13 Encinitas, California from approximately April 2019 through the date of her separation of

14 employment on approximately March 10, 2021. At all relevant times herein, Plaintiff was an

15 "employee" as that term is used in the Labor Code. During the applicable statutory period,

16 Plaintiff was subject to various policies, procedures, and practices implemented by Defendants

17 that, as alleged herein, were and are in violation of the Labor Code.

18 5. Defendant OLIVE HOLDINGS, LLC is and at all relevant times herein was a

19 California corporation, having its principal place of business at 944 Regal Road, Encinitas,

20 California 92024, and is the owner and operator of an industry, business and/or facility licensed to

21 do business and actually doing business in the State of California as a skilled nursing and

22 rehabilitation facility which "specialize[s] in providing rehabilitation services onsite to help [its]

23 residents regain their independence and return to their home."¹ Defendant OLIVE HOLDINGS,

24 LLC is an "employer" as the term is used in the Labor Code and IWC Wage Orders.

25 6. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on

26 information and belief now, and/or at all times mentioned in this Complaint were licensed to do

27 _____

28 ¹ See, <https://aviarahealthcare.com/about-us/> (last accessed November 8, 2021)

1 business and/or actually doing business in California, including San Diego County, and each of
2 the fictitiously named Defendants are responsible for the conduct alleged in this Complaint.
3 Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of
4 DOES 1 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such
5 fictitious names pursuant to California Code of Civil Procedure (“Code of Civil Procedure”)
6 section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and
7 capacities as soon as they are ascertained.

8 7. Defendants, and each of them, are now and/or at all times mentioned in this
9 Complaint were in some manner legally responsible for the events, happenings and circumstances
10 alleged in this Complaint.

11 8. Defendants, and each of them, proximately subjected Plaintiff to the unlawful
12 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

13 9. Defendants, and each of them, are now and/or at all times mentioned herein were
14 the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing
15 the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this
16 Complaint were acting within the course and scope of that agency, servitude and/or employment.

17 10. Defendants, and each of them, are now and/or at all times mentioned in this
18 Complaint were members of and/or engaged in a joint venture, partnership and common
19 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,
20 partnership and common enterprise.

21 11. Defendants, and each of them, at all times mentioned in this Complaint concurred
22 and contributed to the various acts and omissions of each and every one of the other Defendants in
23 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

24 12. Defendants, and each of them, at all times mentioned in this Complaint approved
25 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
26 this Complaint.

27 13. Defendants, and each of them, at all times mentioned in this Complaint aided and
28 abetted the acts and omissions of each and every one of the other Defendants thereby proximately

1 causing the damages alleged in this Complaint.

2 **JURISDICTION AND VENUE**

3 14. The California Superior Court has jurisdiction in this matter pursuant to California
4 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
5 causes except those given by statute to other trial courts.” The statutes under which this action is
6 brought do not specify any other specific basis for jurisdiction.

7 15. The California Superior Court also has jurisdiction in this matter because both the
8 individual and aggregate monetary damages and restitution sought herein exceed the minimal
9 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

10 16. The California Superior Court also has jurisdiction over Defendants because they
11 are corporations and/or entities and/or persons with sufficient minimum contacts in California, are
12 citizens of California, or otherwise intentionally availed themselves of the California market so as
13 to render the exercise of jurisdiction over them by the California courts consistent with traditional
14 notions of fair play and substantial justice. There is no federal question at issue as the issues herein
15 are based solely on California statutes and law, including the Labor Code. Thus, this Court
16 maintains appropriate jurisdiction to hear this matter.

17 17. Venue is proper in the Superior Court of California for the County of San Diego,
18 pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in
19 that liability arose in San Diego County because at least some of the acts and omissions that are
20 the subject matter of this Complaint occurred therein and/or each Defendant either is found,
21 maintains offices, transacts business, exists, and/or has an agent in San Diego County.

22 **FACTUAL ALLEGATIONS**

23 18. During the applicable statutory period, Defendants employed Plaintiff as an hourly
24 paid, non-exempt employee from approximately from approximately April 2019 through the date
25 of her separation of employment on approximately March 10, 2021.

26 19. During the relevant statutory period, Defendants failed and fail to pay Plaintiff for
27 all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a
28 week due to Defendants’ policy and practice of requiring Plaintiff to come to Defendants’

1 facilities on her days off to get tested for COVID-19 without paying reporting time pay for the
2 tests. Moreover, on days when Plaintiff was scheduled to work, prior to clocking in, she was
3 required to fill out a form that asked a series of questions regarding her health to screen COVID-
4 19 symptoms, and take temperature checks. These policies and practices directed by Defendants
5 resulted in Plaintiff being subject to the control of Defendants without payment. Lastly,
6 Defendants had and has a policy and practice of scheduling Plaintiff for work and sending her
7 home upon arrival to the facilities due to Defendants' alleged overstaffing without providing
8 reporting time pay compensation.

9 20. During the relevant statutory period, Defendants failed and fail to provide Plaintiff
10 with compliant thirty minute off-duty thirty-minute-long meal periods for work periods and failed
11 to pay her premium wages at the regular rate of pay thereto. For example, Plaintiff was often
12 interrupted while taking her meal periods. Specifically, Plaintiff was called on her cell phone by
13 Defendants' staff to address needs of the business and was not paid meal period premiums for the
14 noncompliant meal periods.

15 21. During the relevant statutory period, Defendants failed to relinquish control over
16 Plaintiff to provide her with legally-compliant ten (10) minute off-duty rest periods for every four
17 (4) hours of work or major fraction thereof, as required by California law and failed to pay
18 premiums for the noncompliant rest periods. Defendants' policies and practices routinely prevented
19 Plaintiff from taking off-duty ten-minute rest periods by either requiring Plaintiff to either miss
20 her rest periods altogether, work through her rest periods, take untimely rest periods, or take
21 shortened rest periods.

22 22. During the relevant statutory period, Defendants failed to provide Plaintiff with
23 accurate itemized wage statements. For example, subsequent to Plaintiff's separation of
24 employment with Defendants, she was issued a check on April 6, 2021 for "Retro Prior Period
25 Hours" and "Retro Time Off" compensation, however the wage statement failed to state the total
26 hours or rates of pay for these line items of compensation. Additionally, as a result of alleged
27 violations discussed above, Defendants furnished wage statements that failed to correctly show,
28 among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

1 23. During the relevant statutory period, Defendants willfully failed to pay all wages
2 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
3 final wages owed to her due to their failure to pay Plaintiff for all minimum wages, overtime
4 compensation, and their failure to pay meal and rest period premium wages owed.

5 **GENERAL ALLEGATIONS**

6 24. Plaintiff and all other aggrieved employees are current and former non-exempt
7 employees of Defendants that work or worked at Defendants' facilities in California as non-
8 exempt employees during the statutory period.

9 25. During the applicable statutory period, Plaintiff and other current and former
10 aggrieved employees were subject to the same various policies, procedures, and practices
11 implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

12 26. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
13 and/or practice, Defendants failed to pay Plaintiff and all other aggrieved employees for all hours
14 worked and overtime hours worked after eight hours in a day and/or after forty hours in a week
15 due to Defendants' policy and practice of requiring Plaintiff and aggrieved employees to come to
16 Defendants' facilities on their days off to get tested for COVID-19 without paying reporting time
17 pay for the tests. Moreover, on days when Plaintiff and aggrieved employees were scheduled to
18 work, prior to clocking in, they were required to fill out a form that asked a series of questions
19 regarding her health to screen COVID-19 symptoms, and take temperature checks. These policies
20 and practices directed by Defendants resulted in Plaintiff and aggrieved employees being subject
21 to the control of Defendants without payment. Lastly, Defendants had and has a policy and
22 practice of scheduling Plaintiff and aggrieved employees for work and sending them home upon
23 arrival to the facilities due to Defendants' alleged overstaffing without providing reporting time
24 pay compensation.

25 27. During the relevant statutory period, Defendants failed and fail to provide Plaintiff
26 and aggrieved employees with compliant thirty minute off-duty thirty-minute-long meal periods
27 for work periods and failed to pay them premium wages at the regular rate of pay thereto. For
28 example, Plaintiff and aggrieved employees often had to take late and/or interrupted meals and

1 were not paid meal period premiums for the noncompliant meal periods.

2 28. During the relevant statutory period, Defendants failed to relinquish control over
3 Plaintiff and aggrieved employees to provide them with legally-compliant ten (10) minute off-duty
4 rest periods for every four (4) hours of work or major fraction thereof, as required by California
5 law and failed to pay premiums for the noncompliant rest periods. Defendants' policies and
6 practices routinely prevented Plaintiff and aggrieved employees from taking the off-duty ten-
7 minute rest periods by either requiring Plaintiff and aggrieved employees to either miss their rest
8 periods altogether (particularly their second rest periods), work through their rest periods, take
9 untimely rest periods, or take shortened rest periods.

10 29. During the relevant statutory period, Defendants failed to provide Plaintiff and
11 aggrieved employees with accurate itemized wage statements. For example, on information and
12 belief, Plaintiff and aggrieved employee's wage statements do not always provide corresponding
13 hours or rates of pay for certain line times. Additionally, as a result of alleged violations discussed
14 above, Defendants furnished wage statements that failed to correctly show, among other items: (1)
15 gross wages earned, (2) all deductions, and (3) net wages earned.

16 30. During the relevant statutory period, Defendants willfully failed to pay all wages
17 owed to Plaintiff and aggrieved employees upon separation of employment. Defendants still have
18 yet to pay Plaintiff and aggrieved employees all final wages owed to them due to Defendants'
19 failure to pay Plaintiff and aggrieved employees for all minimum wages, overtime compensation,
20 and their failure to pay meal and rest period premium wages owed.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

23 **(California Labor Code §§ 2698, *et seq.*)**

24 31. Plaintiff incorporates by reference and realleges each and every one of the
25 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
26 set forth herein.

27 32. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
28 applicable civil penalties and reasonable attorneys' fees and costs, permitted under PAGA through

1 a representative action on behalf of all aggrieved employees that work or worked for Defendants
2 during the relevant time period.

3 33. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative
4 action is not subject to the formalities required of a class action and class certification of PAGA
5 claims is not required.

6 34. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section
7 2699(c) because she was employed by Defendants during the applicable statutory period and
8 suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiff is well suited
9 to represent the interests of all other aggrieved employees in in this PAGA representative action.

10 35. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
11 penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce
12 Development Agency (hereinafter “LWDA”) for enforcement of labor laws and education of
13 employers and employees about their rights and responsibilities under this code, and twenty-five
14 percent (25%) shall be distributed to the aggrieved employees.

15 36. Plaintiff’s representative action alleges violations of certain Labor Code sections
16 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
17 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

18 37. On September 3, 2021, Plaintiff complied with Labor Code section 2699.3(a) by
19 electronically filing written notice with the LWDA and serving written notice, via certified mail,
20 upon the LWDA and Defendants regarding the specific provisions of the Labor Code alleged to
21 have been violated by Defendants and Plaintiff’s intent to pursue civil penalties against
22 Defendants on behalf of all aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit 1**
23 is a true and correct copy of Plaintiff’s notice letter.

24 38. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall
25 notify the employer and the aggrieved employee or representative by certified mail that it does not
26 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
27 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
28 of the postmark date of the notice given... the aggrieved employee may commence a civil action

1 pursuant to Section 2699.” More than sixty-five calendar days have passed since Plaintiff served
2 notice upon the LWDA and Defendants, and the LWDA did not provide notice of its intent to
3 investigate Plaintiff’s claims. Accordingly, Plaintiff exhausted her obligation to provide
4 administrative notice and is authorized to commence this representative action seeking civil
5 penalties on behalf of herself and all other aggrieved employees of Defendants.

6 39. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
7 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
8 divisions, commissions, boards, agencies or employees for violation of the code may, as an
9 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
10 herself and other current or former employees pursuant to the procedures specified in Labor Code
11 section 2699.3.

12 40. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
13 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
14 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation.

17 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of herself and
18 aggrieved employees, seeks applicable civil penalties for violations of Labor Code sections 201,
19 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1198, and 1199, during the statutory period as set
20 forth below:

21 a. For violations of Labor Code section 201, 202, 203, 226.7, 510, 512, 1194,
22 1197 1198, 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars
23 (\$100) for each aggrieved employee per pay period for each initial violation and two hundred
24 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

25 b. For violations of Labor Code section 226(a), Labor Code section 226.3
26 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty
27 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
28 per aggrieved employee for each subsequent violation.

1 42. Defendants violated Labor Code sections 510, 1194, 1197, and 1198 by not paying
2 Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period as a
3 result of Defendants' policy or practice of requiring them to undergo temperature checks and
4 complete COVID-19 screening forms and for failing to provide reporting time pay on days when
5 aggrieved employees were scheduled to work but turned away upon arrival. Thus, pursuant to
6 Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars
7 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

9 43. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
10 all other aggrieved employees an opportunity to take timely off-duty and uninterrupted thirty
11 minute meal periods for every five hours worked, including timely off-duty and uninterrupted
12 thirty minute long meal periods before the end of the fifth hour of work, and by failing to pay a
13 premium wage equivalent to an additional hour of pay at the correct regular rate of pay for each
14 day a compliant meal period was not provided. Thus, pursuant to Labor Code section 2699(f)(2),
15 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
16 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation.

18 44. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other
19 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,
20 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
21 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
22 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
23 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
24 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
25 subsequent violation.

26 45. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
27 aggrieved employees with accurate itemized wage statements correctly identifying, among other
28 things, correspond ending hours or rates of pay for certain line items, hours worked, wages earned,

1 the correct amount of net wages earned, and the correct amount of deductions that were paid or
2 should have been paid. Thus, pursuant to Labor Code sections 226.3 and 2699(a), Defendants, in
3 addition to, and entirely independent and apart from any other penalty, are subject to a civil
4 penalty for violation Labor Code section 226(a) in the amount of two hundred and fifty dollars
5 (\$250) per aggrieved employee per violation in an initial citation and one thousand dollars
6 (\$1,000) per aggrieved employee for each violation in a subsequent citation.

7 46. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to
8 timely pay Plaintiff and aggrieved employees all wages owed upon separation of employment by
9 failing to pay all minimum wages, overtime compensation, and Defendants' failure to pay meal
10 and rest period premium wages owed. Thus, pursuant to Labor Code section 2699(f)(2),
11 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
12 employee per pay period for the initial violation of these sections, and two hundred dollars (\$200)
13 for each aggrieved employee per pay period for each subsequent violation.

14 47. At all material times, Defendants were Plaintiff and all other aggrieved employees'
15 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
16 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
17 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
18 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
19 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
20 provided by law.

21 48. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
22 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
23 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
24 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
25 Defendants' failure to pay wages owed for all overtime, as alleged herein.

26 49. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
27 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
28 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all

1 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
2 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
3 worked, or major fraction thereof, as alleged herein.

4 50. Defendants violated Labor Code section 1198 by failing to comply with the
5 maximum hours of work and the standards conditions of labor fixed by the IWC under the “Hours
6 and Days of Work”, the “Meal Period”, the “Rest Period” and “Record” sections of the applicable
7 IWC Wage Order, by failing to provide compliant meal periods, failing to pay meal periods
8 premium wages, failing to provide compliant rest periods, failing to pay rest period premium
9 wages, failing to keep and provide accurate records, and failing to timely pay owed wages upon
10 separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2),
11 Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each
12 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
13 each aggrieved employee per pay period for each subsequent violation.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 16 1. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 17 2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
18 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
19 per aggrieved employee for each subsequent violation;
- 20 3. For civil penalties under Labor Code section 2699(f), for Labor Code violations
21 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
22 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
23 aggrieved employee per pay period for each subsequent violation;
- 24 4. For civil penalties under Labor Code section 558, as follows: (1) for an initial
25 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
26 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid;
- 28 5. For an award of reasonable attorneys’ fees and costs pursuant to Labor Code

1 section 2699(g)(1), or other applicable laws;

2 6. For pre-judgment and post-judgment interest as provided by law; and

3 7. For such additional relief as this Court may deem just and proper.

4
5 DATED: November 12, 2021

BOUCHER LLP

6
7 By: 

RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

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9
10 *Attorneys for Plaintiff Margarita Gomez Jimenez,*
11 *An Aggrieved Employee of Defendants,*
12 *on Behalf of the State of California's*
13 *Labor and Workforce Development Agency*
14 *for All Aggrieved Employees of Defendants*
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims alleged in Plaintiff's Complaint to the fullest extent authorized by law.

DATED: November 12, 2021

BOUCHER LLP

By:



RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

*Attorneys for Plaintiff Margarita Gomez Jimenez,
An Aggrieved Employee of Defendants,
on Behalf of the State of California's
Labor and Workforce Development Agency
for All Aggrieved Employees of Defendants*

EXHIBIT 1

BOUCHERLLP

21600 Oxnard Street, Suite 600
Woodland Hills, California 91367

Telephone 818.340.5400
Facsimile 818.340.5401

September 3, 2021

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL

Olive Holdings, LLC
c/o Agent for Service of Process
Attn: Jennifer M. Sternshein, Esq.
5316 E Chapman Ave
Orange, California 92869

Re: *Margarita Gomez Jimenez v. Olive Holdings, LLC, et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Ms. Margarita Gomez Jimenez as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by Olive Holdings in California during the statutory period, against Olive Holdings.

On information and belief, Olive Holdings operates Aviara Healthcare Center, a skilled nursing facility in San Diego County in California. Olive Holdings employed Ms. Gomez Jimenez from approximately April 2019 to March 10, 2021 as a Certified Nursing Assistant at the Aviara Healthcare Center located at 944 Regal Road, Encinitas, CA 92024. Pursuant to California law, Olive Holdings was at all relevant times Ms. Gomez Jimenez’s employer during the statutory period.

In her representative action, Ms. Gomez Jimenez will seek civil penalties pursuant to PAGA as a result of Olive Holdings’ failure to: (1) compensate for all hours worked (Lab. Code §§ 1194, 1197, 1198); (2) compensate for all overtime hours worked (Lab. Code § 510); (3) provide proper meal periods and/or premium pay at the regular rate of pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (4) provide proper rest periods and/or

premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (5) furnish complete and accurate itemized wage statements (Lab. Code § 226(a)); and (6) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197, 1198, and 2699)

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

Labor Code section 1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1197 states, in pertinent part, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Section 2 of the applicable Wage Order states that, “Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work.”

In relevant part, Section 4 of the applicable Wage Order states that, “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Ms. Gomez Jimenez’s employment, Olive Holdings failed to compensate her and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Olive Holdings’ policy and

practice of requesting them to come to Olive Holding's facilities on their days off to get tested for COVID-19 without paying reporting time pay for the tests. Moreover, on days when Ms. Gomez Jimenez and aggrieved employees were scheduled to work, prior to clocking in, they were required to fill out a form that asked a series of questions regarding their health to screen COVID-19 symptoms, and take temperature checks. This process resulted in Ms. Gomez Jimenez and aggrieved employees being subjected to the control of the Olive Holdings for approximately 2-4 minutes each day without compensation. Lastly, Olive Holdings had and has a policy and practice of scheduling Ms. Gomez Jimenez and aggrieved employees for work and sending them home upon arrival to the facilities due to Olive Holdings' alleged overstaffing without providing reporting time pay compensation.

Accordingly, Ms. Gomez Jimenez, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

Section 11 of the applicable Wage Order provides that:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Olive Holdings failed and fails to provide Ms. Gomez Jimenez and aggrieved employees with compliant thirty minute off-duty meal periods for work periods and failed to pay them premium wages. For example, Ms. Gomez Jimenez and aggrieved employees were often interrupted while taking their meal periods. Specifically, Ms. Gomez Jimenez and aggrieved employees were called on their cell phones by Olive Holdings' staff to address needs of the business and were not paid meal period premiums for the incompliant meal periods.

Accordingly, Ms. Gomez Jimenez, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1197, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

Section 12 of the applicable Wage Order provides that:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Olive Holdings’ policies and practices failed and fails to provide Ms. Gomez Jimenez and aggrieved employees with off-duty rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays they failed to provide them with an opportunity to take rest periods. Ms. Gomez Jimenez and aggrieved employees typically worked and work eight hours per day, and Olive Holdings’ policies and practices routinely prevented and prevent them from taking the off-duty ten-minute rest breaks they are entitled to, by making Ms. Gomez Jimenez and other aggrieved employees either miss their rest periods altogether, work through their rest periods, take untimely rest periods, or take shortened rest periods. For example, Ms. Gomez Jimenez and aggrieved employees were often interrupted while taking their rest periods. Specifically, Ms. Gomez Jimenez and aggrieved employees were called on their cell phones by Olive Holdings’ staff to address needs of the business and were not paid rest period premiums for the incompliant rest periods.

Accordingly, Ms. Jimenez Gomez, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (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 rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Olive Holdings failed and fail to furnish accurate itemized wage statements to Ms. Gomez Jimenez and, upon information and belief, aggrieved employees. For example, subsequent to Plaintiff's separation of employment, she was issued a check on April 6, 2021 for "Retro Prior Period Hours" and "Retro Time Off" compensation, however the wage statement failed to state the total hours or rates of pay for these line items of compensation. Further, as a result of alleged violations discussed above, Olive Holdings furnished wage statements that failed to correctly show: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

Accordingly, Ms. Gomez Jimenez on behalf of herself and aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Olive Holdings willfully failed and fails to provide Ms. Gomez Jimenez, and, upon information and belief, aggrieved employees all wages due and owed upon separation of employment – as described above, Olive Holdings violated Labor Code sections 201 or 202.

Accordingly, Ms. Gomez Jimenez, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC
WAGE ORDERS
(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Olive Holdings failed to pay Ms. Gomez Jimenez and aggrieved employees all overtime compensation and provide compliant meal periods and failed to pay premium wages at the regular rate of pay. Accordingly, Ms. Gomez Jimenez, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

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CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Ms. Gomez Jimenez's employment with Olive Holdings, including time records and wage statements, and Ms. Gomez Jimenez's confirmation of Olive Holdings' unlawful practices and policies. As a result of the foregoing violations, Ms. Gomez Jimenez is entitled to file a Complaint and invoke the protections of PAGA. Ms. Gomez Jimenez has placed Olive Holdings on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: _____

Alexander Gamez, Esq.