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CONSTANCE COOPER, YADIRA IGLESIAS,
MARIA MARTINEZ and ILIANA VASQUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CONSTANCE COOPER, an individual,
YADIRA IGLESIAS, an individual, MARIA
MARTINEZ, an individual, ILIANA
VASQUEZ, an individual, on behalf of
themselves and other current and former
employees,

Plaintiffs,

vs.

HUMANGOOD, a California Corporation;
HUMANGOOD SOCAL, a California
Corporation; HUMANGOOD NORCAL, a
California Corporation; HUMANGOOD
FRESNO, a California Corporation; and
DOES 1 through 50,

Defendants.

Case No. 37-2021-00053624-CU-OE-CTL

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay State Overtime Under L.C. §§ 510, 1194, 1198 and the IWC Wage Order;
2. Failure to Pay Meal Premiums at the Regular Rate Under L.C. § 226.7(c) and the IWC Wage Order;
3. Failure to Pay Wages Upon Separation Under L.C. §§ 201, 202, 203;
4. Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*;
5. Violation of L.C. §§ 510, 1194, 1198 and the IWC Wage Order;
6. Violations of L.C. § 226.7, 226.7(c);
7. Violations of L.C. §§ 201, 202, 203;
8. Violations of L.C. §§ 246, 246(l).

1 Plaintiffs CONSTANCE COOPER (“COOPER”), YADIRA IGLESIAS (“IGLESIAS”),
2 MARIA MARTINEZ (“MARTINEZ”), and ILIANA VASQUEZ (“VASQUEZ”) all in their
3 capacity as the State of California’s designated proxy under the Private Attorneys General Act,
4 acting on behalf of other current and former California employees (“Represented Employees”), and
5 individually on behalf of themselves and all other similarly situated individuals (cumulatively
6 “Plaintiffs” or “Class Members”) allege the following:

7 **NATURE OF THE ACTION**

8 1. Plaintiffs, by and through this action, seek individual, representative, and class relief.

9 2. Plaintiffs bring the class action (“Class”) on behalf of themselves and Class Members
10 employed by Defendants HUMANGOOD, HUMANGOOD SOCAL, HUMANGOOD NORCAL,
11 HUMANGOOD FRESNO, and DOES 1 through 50 (collectively referred to “Defendants”) in
12 California for wage and hour violations of the California Labor Code, the applicable Industrial
13 Welfare Commission Wage Orders (the “IWC Wage Order”), and the California Business and
14 Professions Code section 17200 et seq. (“UCL”).

15 3. Plaintiffs, on behalf of themselves and all Class Members, bring this action seeking
16 reimbursement, wages, penalties, restitution, injunctive and other equitable relief, reasonable
17 attorneys’ fees, and costs, and any other remedies the Court deems just due to the violations
18 committed by Defendants as alleged in this Complaint.

19 4. By this action, Plaintiffs opt out of any pending wage and hour class-action, if any,
20 where Plaintiffs’ claims would or may be covered otherwise.

21 5. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
22 sections 2698, 2699 *et seq.*, Plaintiffs bring the representative action against Defendants for wage
23 and hour violations of the California Labor Code and the applicable Industrial Welfare Commission
24 Wage Order (the “IWC Wage Order”).

25 6. Pursuant to Labor Code section 2699, any provision of the Labor Code that provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for
28 violation of the code may, as an alternative, be recovered through a civil action brought by an

1 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
2 to the procedures specified in Labor Code section 2699.3.

3 7. By this action, Plaintiffs, who are aggrieved employees, seek civil penalties on behalf
4 of themselves and other aggrieved employees pursuant to the PAGA.

5 8. Plaintiffs seek to recover civil penalties and reasonable attorney's fees and costs
6 through a representative action permitted under the PAGA and the California Supreme Court in
7 *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class certification of the claims under the
8 PAGA are not required.

9 9. Plaintiffs bring their claims under the PAGA as the state's designated proxy, suing on
10 behalf of all affected employees.

11 **JURISDICTION AND VENUE**

12 10. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is
13 proper in the Superior Court of California, County of San Diego, State of California because
14 Plaintiffs allege claims arising under California law.

15 11. This Court has jurisdiction over the Defendants because each is an association,
16 corporation, business entity, or individual that conducts substantial business in the State of
17 California, County of San Diego.

18 12. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the
19 Superior Court of California for the County of San Diego because this is where Plaintiffs were
20 employed and is where the wrongful misconduct alleged herein occurred.

21 **THE PARTIES**

22 13. Plaintiffs are each an individual residing in the County of San Diego, California.

23 14. Defendants do business in the County of San Diego, State of California.

24 15. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins*
25 *Int'l California, Inc.* (2020) 9 Cal.5th 73, 81. [The "government entity on whose behalf the plaintiff
26 files suit is always the real party in interest."].)

27 16. The true names and capacities, whether individual, corporate, associate or otherwise
28 of the Defendants named herein as DOES 1 through 50, are unknown to Plaintiffs at this time.

1 Plaintiffs therefore sues said Defendants by such fictitious names pursuant to § 474 of the California
2 Code of Civil Procedure. Plaintiffs will seek leave to amend the Complaint to allege the true names
3 and capacities of DOES 1 through 50 when their names are ascertained. Plaintiffs are informed and
4 believes, and based thereon alleges, that each of the DOE Defendants is in some manner liable to
5 Plaintiffs for the events and actions alleged herein.

6 17. Plaintiffs are informed and believes, and based thereon alleges, that at all times, each
7 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of
8 the other Defendants and each were co-conspirators with respect to the acts and the wrongful
9 conduct alleged herein so that each is responsible for the acts of the other in connection with the
10 conspiracy and in proximate connection with the other Defendants.

11 18. Plaintiffs are informed and believes, and based thereon allege, that each Defendant
12 was acting partly within and partly without the scope and course of their employment, and was
13 acting with the knowledge, permission, consent, and ratification of every other Defendant.

14 19. Plaintiffs are informed and believes that Defendants HumanGood, HumanGood
15 NorCal, HumanGood SoCal, and HumanGood Fresno were and are California corporations.
16 Plaintiffs are informed and believes that at all times herein mentioned Defendant and Does 1
17 through 50, are and were corporations, business entities, individuals, or partnerships that are and
18 were licensed to do business and actually doing business in the State of California. Based upon all
19 the facts and circumstances incident to Defendants' business, Defendants are subject to the Labor
20 Code sections at issue in this complaint.

21 20. Plaintiffs do not know the true names or capacities of the defendants sued herein as
22 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
23 sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true
24 names and capacities are known. Plaintiffs are informed and believes that each of said fictitious
25 defendants was responsible in some way for the matters alleged herein and proximately caused the
26 illegal employment practices, wrongs, and injuries complained of herein.

27 21. At all times herein mentioned, each of said Defendants participated in the doing of
28 the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of

1 each of the other Defendants, as well as the agents of all Defendants, and were acting within the
2 course and scope of said agency and employment.

3 22. Under California law, Defendants are jointly and severally liable as employers for the
4 violations alleged herein because they have each exercised sufficient control over the wages, hours,
5 working conditions, and employment status of Plaintiffs and the Class. Each Defendant had the
6 power to hire and fire Plaintiffs and the Class, supervised and controlled their work schedule and
7 conditions of employment, determined their rates of pay, and maintained their employment records.
8 Defendants suffered or permitted Plaintiffs and the Class to work or engaged them as to create a
9 common law employment relationship. As joint employers of Plaintiffs and the Class, Defendants
10 are jointly and severally liable for the relief available to Plaintiffs and the Class under the law.

11 23. Plaintiffs are informed and believe, and thereon alleges, that at all relevant times,
12 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and the Class
13 Members because Defendants have jointly required that Plaintiffs and the Class Members perform
14 work which is an integral part of Defendants' businesses and jointly exercised meaningful control
15 over (i) the work performed by Plaintiffs and the Class Members, (ii) their wages, hours, and
16 working conditions, including the quantity, quality standards, speed, scheduling, and operative
17 details of the tasks performed by Plaintiffs and the Class Members; and (iii) Plaintiffs and the Class
18 Members, in general, and as a matter of economic reality, in that Plaintiffs and the Class were
19 dependent on Defendants, who jointly reaped the benefits from noncompliance with statutory
20 provisions governing their employments.

21 24. Plaintiffs are informed and believe that at all times material hereto, each of said
22 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
23 each of the other Defendants and was acting within the course and scope of such agency,
24 employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were
25 perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said
26 acts, conduct, or omissions of the acting Defendants. Plaintiffs are further informed and believe that
27 Defendants HumanGood, HumanGood NorCal, HumanGood SoCal, and HumanGood Fresno are
28 alter egos of each other for the following additional reasons:

- 1 (i) Each shares the same principal place of business address of: 6120 STONERIDGE
2 MALL ROAD #100, PLEASANTON, CA 94588
- 3 (ii) Each shares the same Chief Executive Officer, John Cochrane;
- 4 (iii) Each shares the same other officers, including, Secretary, Declan Brown, and
5 Chief Financial Officer, Pamela Claassen, each of which also share the same
6 mailing address; and
- 7 (iv) Each shares the same employee handbook, which specifies that the policies stated
8 therein equally apply to HumanGood, HumanGood NorCal, HumanGood SoCal,
9 and HumanGood Fresno.

10 25. Plaintiffs are informed and believe that at all times material hereto each of the
11 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in
12 proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the
13 course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

14 **GENERAL ALLEGATIONS**

15 26. Defendants are one of the largest owners and operators of senior living communities
16 in California.

17 27. Plaintiffs worked for Defendants during which time they were paid hourly, on a bi-
18 weekly basis, and were considered nonexempt.

19 28. During the relevant time period, Defendants are believed to have employed more
20 than 100 employees.

21 29. During the relevant time period, Plaintiffs and Class Members are believed to have
22 earned nondiscretionary earnings in the form of incentives and shift bonuses among others.

23 30. Upon information and belief, during all times relevant to this action, Defendants
24 failed to pay proper overtime and double time under Labor Code §§ 510, 1194, 1198 and the IWC
25 Wage Order to Plaintiffs and Class Members, resulting in the underpayment of wages to Plaintiffs
26 and Class Members.

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1 31. Upon information and belief, Defendants failed to pay meal premiums at the regular
2 rate of pay in violation of Labor Code section 226.7(c), resulting in the underpayment of wages to
3 Plaintiffs and Class Members.

4 32. Upon information and belief, during all times relevant to this action, Defendants
5 failed to pay all earned wages upon separation of employment under Labor Code §§ 201-203.

6 33. Upon information and belief, during all times relevant to this action, Defendants
7 failed to provide Plaintiffs and Class Members with paid sick leave at the appropriate rate of pay
8 under Labor Code § 246, resulting in the underpayment of wages to Plaintiffs and Class Members.

9 34. Under Labor Code § 223, it is unlawful for an employer to secretly pay a lower wage
10 while purporting to pay the wage designated by statute or by contract. Upon information and belief,
11 during all times relevant to this action, Defendants violated Labor Code § 223 by secretly paying
12 holiday pay at a rate that was less than the regular rate of pay Defendants promised to compensate
13 such employees for working on holidays as memorialized in its employee handbook. Such conduct
14 resulted in the underpayment of wages to Plaintiffs and Class Members.

15 35. Upon information and belief, Defendants failed to properly provide Plaintiffs and
16 Class Members with holiday pay at the regular rate of pay pursuant to its handbook because it did
17 not include nondiscretionary earnings, such as Shift Bonuses, when calculating holiday pay.

18 36. Defendants' employee handbook provides the following:

19 "When regular full-time and regular part-time nonexempt employees work
20 on the day of the nationally recognized holiday, they are paid as follows:

- 21 • Holiday pay plus the regular rate of pay for all hours worked
22 on the Martin Luther King Jr. Day, Presidents' Day, Memorial
23 Day, Independence Day, and Labor Day.
- 24 • Holiday pay plus one-and-one-half times the regular rate of
25 pay (1.5 X the regular rate) for all hours worked on New Year's
26 Day, Thanksgiving Day, and Christmas Day.

27 37. By way of one example, Plaintiff IGLESIAS worked on Presidents Day, February
28 18, 2019, yet was not paid for the hours she worked on such holiday at the regular rate of pay.

38. By way of another example, Plaintiff COOPER worked on Presidents Day, February 17, 2020, yet was not paid for the hours she worked on such holiday at the regular rate of pay.

39. As a result, Defendants secretly paid Plaintiffs and Class Members lower wages for working on designated holidays while purporting to pay the wages designated by the employee handbook in violation of Labor Code § 223. Stated differently, Plaintiffs and Class Members would receive holiday pay for hours worked on a holiday that was less than what they were legally entitled to pursuant to contract.

40. Upon information and belief, Defendants engaged in unlawful and unfair business practices under the ULC because they violated Labor Code §§ 510, 1194, 1198, 226.7(c), 246, 201, 202, 203, 246, 223 and the IWC Wage Order resulting in the underpayment of wages to Plaintiffs and Class Members.

41. Upon information and belief, to date, Defendants have not paid Plaintiffs and Class Members all of their wages due and payable, in an amount to be shown according to proof.

CLASS ACTION ALLEGATIONS

42. This action is maintainable as a class action pursuant to California Code of Civil Procedure § 382 as to violations of the Labor Codes, Applicable IWC Wage Orders, and the UCL for underpaid overtime wages, underpaid meal premium wages, underpaid sick pay wages, underpaid holiday wages, failure to pay all wages upon separation of employment, waiting time penalties, unlawful business practices and reasonable attorneys' fees and costs. Plaintiffs are representative of other employees and is acting on behalf of their interests. The similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' own employment records.

43. The Class that Plaintiffs seek to represent is defined as follows:

CLASS

All persons who worked as nonexempt employees for Defendants in California at any time from four years prior to the date of filing of this action through the date of trial who received an incentive, bonus, shift bonus, shift differential, and/or commission.

1 44. The individuals included within the alleged Class are so numerous that joinder of
2 each of them would be impracticable, and the disposition of their claims in a class action, rather than
3 in numerous individual actions, will benefit the parties, the Court, and the interests of justice.

4 45. Among the proposed Class there is a well-defined community of interest in the
5 questions of law and/or fact involved, affecting the Class Members. These common questions
6 include, but are not limited to:

- 7 a) Whether Defendants' overtime compensation violates Labor Code §§ 510,
8 1194, 1198 and the IWC Wage Order;
- 9 b) Whether Defendants' meal premium compensation violates Labor Code §
10 226.7(c) and the IWC Wage Order;
- 11 c) Whether Defendants' failure to provide formerly employed Class Members
12 with all wages due upon separation violates Labor Code §§ 201-203;
- 13 d) Whether Defendants' sick pay compensation violates Labor Code § 246;
- 14 e) Whether Defendants' holiday pay was less than the regular rate and in violation
15 of Labor Code § 223; and
- 16 f) Whether Defendants' various violations of the Labor Code serve as predicate
17 violations of the UCL.

18 46. Common questions of law and/or fact predominate over questions that affect only
19 individual Class Members. Plaintiffs' claims are typical of those belonging to the members of the
20 Class they seek to represent, and Plaintiffs can adequately represent the Class they seek to represent.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 47. As to penalty claims under the PAGA, on October 18, 2021, Plaintiffs COOPER and
23 IGLESIAS, via counsel, sent the statutorily required notice to the LWDA, indicating that Plaintiff
24 intends to pursue labor code claims against Defendants.

25 48. On October 18, 2021, Plaintiffs COOPER and IGLESIAS, via counsel, sent a copy of
26 the October 18, 2021 notice to Defendants.

27 49. The statutory period expired since Plaintiffs COOPER and IGLESIAS sent the
28 October 18, 2021 notice to the LWDA and LWDA did not serve Plaintiffs with a notice of its intent

1 to assume jurisdiction over the applicable penalty claims and did not provide notice as set forth in
2 Labor Code section 2699.3(a)(2)(A).

3 50. On December 22, 2021, and after further investigation, Plaintiffs COOPER and
4 IGLESIAS, via counsel, sent an amended notice to the LWDA and Defendants adding Plaintiffs
5 MARTINEZ and VASQUEZ to the notice of PAGA claims.

6 51. Therefore, Plaintiffs have exhausted the administrative requirements as required
7 under the PAGA.

8 52. The Causes of Action alleged in this Complaint are appropriately suited for a
9 Representative Action under the PAGA because:

- 10 a. Their action involves allegations of violations of provisions of the California
11 Labor Code that provide for a civil penalty to be assessed and collected by the
12 LWDA or any departments, divisions, commissions, boards, agencies or employees;
- 13 b. Plaintiffs are each an “aggrieved employee” because Plaintiffs were employed
14 by the alleged violator and had one or more of the alleged violations committed
15 against them; and
- 16 c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3,
17 as set forth above.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 510, 1194, 1198 and IWC Wage Order against all**
20 **Defendants)**

21 53. Plaintiffs re-alleges and incorporates by reference the foregoing allegations as though
22 set forth herein.

23 54. Eight hours of labor constitutes a day’s work, and any work in excess of 8 hours in 1
24 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on
25 the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one
26 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
27 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
28 (Labor Code § 510 and IWC Wage Orders § 3(A).)

1 55. Plaintiffs are informed and believe and based thereon allege that during all times
2 relevant to this action, Plaintiffs would sometimes work more than 8 hours per workday but did not
3 receive proper overtime wages for overtime hours suffered or permitted to work.

4 56. Specifically, Plaintiffs and Class Members were not paid proper overtime when they
5 worked overtime hours because Defendants failed to include all compensation earned during a given
6 period when determining the regular rate of pay.

7 57. By way of one example, Plaintiffs and Class Members would earn “Shift Bonuses”
8 and “Incentives” which were not properly factored into the regular rate of pay for purposes of
9 compensating overtime.

10 58. By way of further example, Defendants would treat the “Shift Bonus” as a
11 production bonus to which Defendants would then use a larger divisor consisting of all regular and
12 overtime hours when computing the appropriate regular rate of pay. However, the “Shift Bonus”
13 earnings are considered flat-sum compensation, which requires a smaller divisor consisting of only
14 regular hours worked. (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 562.)

15 59. By way of example, Plaintiff IGLESIAS was entitled to a multiple of the regular rate
16 of pay based on the flat sum bonus earned during the workweek for those overtime hours worked on
17 January 17, 2020.

18 60. By way of example, Plaintiff COOPER was entitled to a multiple of the regular rate
19 of pay based on the flat sum bonus earned during the workweek for those overtime hours worked on
20 March 27, 2020.

21 61. By way of example, Plaintiff IGLESIAS was entitled to a multiple of the regular rate
22 of pay based on the incentive bonus earned for those overtime hours worked on December 6, 2017.

23 62. By way of example, Plaintiff COOPER was entitled to a multiple of the regular rate
24 of pay based on the incentive bonus earned for those overtime hours worked on July 20, 2018.

25 63. Upon information and belief, during all times relevant to this action, Defendants
26 violated Labor Code §§ 510, 1194, 1198 and the IWC Wage Orders section 3(A).

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1 64. Plaintiffs and Class Members seek to recover unpaid wages, penalties, interest,
2 reasonable attorneys' fees, and costs pursuant to Labor Code §§ 218.5, 218.6, 510, and 1194 or any
3 other applicable law in an amount to be shown according to proof.

4 **SECOND CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 226.7, 226.7(c) and the IWC Wage Order Against All**
6 **Defendants)**

7 65. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though
8 set forth herein.

9 66. Under Labor Code section 226.7(c), if an employer fails to provide an employee with
10 a proper meal period, the employer shall pay the employee one hour of pay at the employee's
11 regular rate of compensation for each workday that the meal period is not provided.

12 67. At minimum, Plaintiffs and Class Members should have been paid a meal break
13 premium for each and every missed, delayed, or shortened meal period in an amount that was
14 equivalent to their regular rate of pay for the pay period. Because, upon information and belief,
15 Defendants failed to issue such meal premiums at the regular rate of pay for the pay period,
16 Defendants violated Labor Code § 226.7(c) and IWC Wage Order. (*Ferra v. Loews Hollywood*
17 *Hotel, LLC* (2021) 11 Cal. 5th 858.)

18 68. By way of example, Plaintiff IGLESIAS was entitled to a meal premium on January
19 17, 2020, yet was not paid for such at the regular rate of pay.

20 69. By way of example, Plaintiff COOPER was entitled to a meal premium on July 20,
21 2018, yet was not paid for such at the regular rate of pay.

22 70. Plaintiffs and Class Members seek to recover from Defendants, and each of them, the
23 meal premium wages that are owed to them, in an amount to be shown according to proof.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 201, 202, and 203 against all Defendants)**

26 71. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though
27 set forth herein.

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1 72. Under Labor Code section 201, if an employee is discharged by his/her employer, the
2 wages earned and unpaid at the time of discharge are due and payable immediately.

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

7 74. Labor Code section 203 provides, in pertinent part: "If an employer willfully fails to
8 pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits,
9 the wages of the employee shall continue as a penalty from the due date thereof at the same rate
10 until paid or until an action therefore is commenced; but the wages shall not continue for more than
11 30 days. ..."

12 75. Upon information and belief, during all times relevant to this action, Defendants
13 failed to pay proper overtime and double time under Labor Code §§ 510, 1194, 1198 and the IWC
14 Wage Order to Plaintiffs and Class Members, resulting in the underpayment of wages to Plaintiffs
15 and Class Members. Upon information and belief, these wages are still owed.

16 76. Upon information and belief, Defendants failed to pay meal premiums at the regular
17 rate of pay in violation of Labor Code section 226.7(c), resulting in the underpayment of wages to
18 Plaintiffs and Class Members. Upon information and belief, these wages are still owed.

19 77. Upon information and belief, during all times relevant to this action, Defendants
20 failed to provide Plaintiffs and Class Members with paid sick leave at the appropriate rate of pay
21 under Labor Code § 246, resulting in the underpayment of wages to Plaintiffs and Class Members.
22 Upon information and belief, these wages are still owed.

23 78. Upon information and belief, during all times relevant to this action, Defendants
24 violated Labor Code § 223 by secretly paying holiday pay at a rate that was less than the regular rate
25 of pay Defendants promised to compensate such employees for working on holidays as
26 memorialized in its employee handbook. Such conduct resulted in the underpayment of wages to
27 Plaintiffs and Class Members. Upon information and belief, these wages are still owed.

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79. Upon information and belief, Plaintiffs and the Class Members did not receive all wages upon termination or separation of employment. By way of example, Plaintiffs and the Class Members are owed overtime wages, meal premium wages, holiday wages, and wages for paid sick leave. Upon information and belief, these wages have not been paid.

80. Plaintiffs and the Class Members seek to recover waiting-time penalties in an amount to be shown according to proof.

81. Plaintiffs and Class Members seek to recover unpaid wages, penalties, interest, reasonable attorneys' fees, and costs pursuant to Labor Code §§ 218.5, 218.6, or any other applicable law in an amount to be shown according to proof.

FOURTH CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200 *et seq.* against all Defendants)

82. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

83. Defendants, and each of them, are “persons” as defined under Business and Professions Code § 17021.

84. Plaintiffs are entitled to the rights, compensation, and protections afforded under the relevant Labor Code section alleged to have been violated below.

85. Plaintiffs are informed and believe and based thereon alleges that Defendants committed the unlawful and unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the following laws:

- a. Labor Code §§ 510, 1194, 1198, and the IWC Wage Order;
- b. Labor Code §§ 226.7, 226.7(c) and the IWC Wage Order;
- c. Labor Code §§ 246, 246(l);
- d. Labor Code §§ 201, 202, 203;
- e. Labor Code § 223;

86. Defendants' conduct, as alleged in this complaint, constitutes unlawful and unfair conduct prohibited by the UCL.

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87. The unlawful and unfair business practices conducted by Defendants are ongoing and present a threat and likelihood of continuing against Plaintiffs and Class Members and, accordingly, Plaintiffs and Class Members seek injunctive relief in the form of an order by the court requiring Defendants to issue Plaintiffs and Class Members accurate payroll records.

88. Plaintiffs and Class Members have suffered injury in fact and lost money or property because of the aforementioned unlawful and unfair competition.

89. Defendants' conduct directly and proximately caused Plaintiffs and Class Members to suffer damages in an amount to be shown according to proof.

90. Plaintiffs and Class Members also seek to recover from Defendants, and each of them, attorneys' fees under California Code of Civil Procedure § 1021.5, or any other applicable law.

FIFTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code §§
510, 1194, 1198 and IWC Wage Order against all Defendants)**

91. Plaintiffs re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

92. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. (Labor Code § 510 and IWC Wage Orders § 3(A).)

93. Plaintiffs are informed and believe and based thereon allege that during all times relevant to this action, Plaintiffs would sometimes work more than 8 hours per workday but did not receive proper overtime wages for overtime hours suffered or permitted to work.

94. Specifically, Plaintiffs and Aggrieved Employees were not paid proper overtime when they worked overtime hours because Defendants failed to include all compensation earned during a given period when determining the Regular Rate of Pay.

1 95. By way of one example, Plaintiffs and Aggrieved Employees would earn “Shift
2 Bonuses” and “Incentives” which were not properly factored into the regular rate of pay for
3 purposes of compensating overtime.

4 96. By way of further example, Defendants would treat the “Shift Bonus” as a
5 production bonus to which Defendants would then use a larger divisor consisting of all regular and
6 overtime hours when computing the appropriate regular rate of pay. However, the “Shift Bonus”
7 earnings are considered flat-sum compensation, which requires a smaller divisor consisting of only
8 regular hours worked. (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 562.)

9 97. By way of example, Plaintiff IGLESIAS was entitled to a multiple of the regular rate
10 of pay based on the flat sum bonus earned during the workweek for those overtime hours worked on
11 January 17, 2020.

12 98. By way of example, Plaintiff COOPER was entitled to a multiple of the regular rate
13 of pay based on the flat sum bonus earned during the workweek for those overtime hours worked on
14 March 27, 2020.

15 99. By way of example, Plaintiff IGLESIAS was entitled to a multiple of the regular rate
16 of pay based on the incentive bonus earned for those overtime hours worked on December 6, 2017.

17 100. By way of example, Plaintiff COOPER was entitled to a multiple of the regular rate
18 of pay based on the incentive bonus earned for those overtime hours worked on July 20, 2018.

19 101. Upon information and belief, during all times relevant to this action, Defendants
20 violated Labor Code §§ 510, 1194, 1198 and the IWC Wage Orders section 3(A).

21 102. PAGA imposes upon Defendants, and each of them, civil penalties for violating
22 Labor Code sections 226.7(c).

23 103. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
24 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
25 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations
26 for all Labor Code provisions for which a civil penalty is not specifically provided.

27 104. Plaintiffs are seeking civil penalties against Defendants under Labor Code section
28 2699(f), 558, and/or any other applicable statute allowing recovery of civil penalties under PAGA

1 on behalf of himself and the Represented Employees as alleged herein in an amount to be shown
2 according to proof.

3 105. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover
4 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the
5 Represented Employees as alleged herein in an amount to be shown according to proof.

6 **SIXTH CAUSE OF ACTION**

7 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code §§**
8 **226.7, 226.7(c), and the IWC Wage Order against all Defendants)**

9 106. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though
10 set forth herein.

11 107. Under Labor Code section 226.7(c), if an employer fails to provide an employee with
12 a proper meal period, the employer shall pay the employee one hour of pay at the employee's
13 regular rate of compensation for each workday that the meal period is not provided.

14 108. At minimum, Plaintiffs and Aggrieved Employees should have been paid a meal
15 break premium for each and every missed, delayed, or shortened meal period in an amount that was
16 equivalent to their regular rate of pay for the pay period. Because, upon information and belief,
17 Defendants failed to issue such meal premiums at the regular rate of pay for the pay period,
18 Defendants violated Labor Code § 226.7(c) and IWC Wage Order. (*Ferra v. Loews Hollywood*
19 *Hotel, LLC* (2021) 11 Cal. 5th 858.)

20 109. By way of example, Plaintiff IGLESIAS was entitled to a meal premium on January
21 17, 2020, yet was not paid for such at the regular rate of pay.

22 110. By way of example, Plaintiff COOPER was entitled to a meal premium on July 20,
23 2018, yet was not paid for such at the regular rate of pay.

24 111. PAGA imposes upon Defendants, and each of them, civil penalties for violating
25 Labor Code sections 226.7(c).

26 112. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
28 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations

1 for all Labor Code provisions for which a civil penalty is not specifically provided.

2 113. Plaintiffs are seeking civil penalties against Defendants under Labor Code
3 sections 2699(f), 226.7, the IWC Wage Order, and/or any other applicable statute allowing recovery
4 of civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

5 114. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover
6 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
7 be shown according to proof.

8 **SEVENTH CAUSE OF ACTION**

9 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code §§**
10 **201, 202, and 203 against all Defendants)**

11 115. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though
12 set forth herein.

13 116. Under Labor Code section 201, if an employee is discharged by his/her employer, the
14 wages earned and unpaid at the time of discharge are due and payable immediately.

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

19 118. Labor Code section 203 provides, in pertinent part: "If an employer willfully fails to
20 pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits,
21 the wages of the employee shall continue as a penalty from the due date thereof at the same rate
22 until paid or until an action therefore is commenced; but the wages shall not continue for more than
23 30 days. ..."

24 119. Upon information and belief, during all times relevant to this action, Defendants
25 failed to pay proper overtime and double time under Labor Code §§ 510, 1194, 1198 and the IWC
26 Wage Order to Plaintiffs and Aggrieved Employees, resulting in the underpayment of wages to
27 Plaintiffs and Class Members. Upon information and belief, these wages are still owed.

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1 120. Upon information and belief, Defendants failed to pay meal premiums at the
2 regular rate of pay in violation of Labor Code section 226.7(c), resulting in the underpayment of
3 wages to Plaintiffs and Aggrieved Employees. Upon information and belief, these wages are still
4 owed.

5 121. Upon information and belief, during all times relevant to this action, Defendants
6 failed to provide Plaintiffs and Aggrieved Employees with paid sick leave at the appropriate rate of
7 pay under Labor Code § 246, resulting in the underpayment of wages to Plaintiffs and Aggrieved
8 Employees. Upon information and belief, these wages are still owed.

9 122. Upon information and belief, during all times relevant to this action, Defendants
10 violated Labor Code § 223 by secretly paying holiday pay at a rate that was less than the regular rate
11 of pay Defendants promised to compensate such employees for working on holidays as
12 memorialized in its employee handbook. Such conduct resulted in the underpayment of wages to
13 Plaintiffs and Aggrieved Employees. Upon information and belief, these wages are still owed.

14 123. Upon information and belief, Plaintiffs and the Aggrieved Employees did not receive
15 all wages upon termination or separation of employment. By way of example, Plaintiffs and the
16 Aggrieved Employees owed overtime wages, meal premium wages, holiday wages, and wages for
17 paid sick leave. Upon information and belief, these wages have not been paid.

18 124. PAGA imposes upon Defendants, and each of them, civil penalties for violating
19 Labor Code sections 201, 202, and 203.

20 125. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
21 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
22 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations
23 for all Labor Code provisions for which a civil penalty is not specifically provided.

24 126. Plaintiffs are seeking civil penalties against Defendants under Labor Code section
25 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA as
26 alleged herein in an amount to be shown according to proof.

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127. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to be shown according to proof.

EIGHTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code §§
246, 246(l) against all Defendants)**

128. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

129. Under Labor Code section 246, employers in California must provide employees with paid sick leave to be paid at a specified rate of pay which must factor in additional earnings during a given pay period wherein such leave is used.

130. During his employment, Plaintiffs earned additional nondiscretionary compensation, such as, for example, incentive pay.

131. Upon information and belief, Defendants failed to provide Plaintiffs and Represented Employees with the appropriate rate of pay when paying sick pay, as required under Labor Code sections 246 and 246(l).

132. PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 246 and 246(l).

133. Civil penalties under the PAGA are equitable in nature. (*Nationwide Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, (2020) 9 Cal.5th 279.)

134. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

135. Plaintiffs are seeking equitable relief in the form of civil penalties against Defendants under Labor Code sections 2699(f), and/or 248.5, and/or any other applicable statute allowing recovery of civil penalties under PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

136. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

137. Plaintiffs are seeking civil penalties against Defendants, including Labor Code section 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

138. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiffs seek to recover attorney's fees, costs, equitable relief in the form of civil penalties, in an amount to be shown according to proof.

139. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiffs seek to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

PRAYER FOR RELIEF

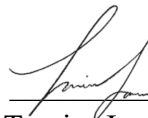
WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, prays for judgment against Defendants as follows:

1. For certification of this action as a class action;
2. For appointment of Plaintiffs as the representatives of the Class;
3. For appointment of counsel for Plaintiffs as Class Counsel;
4. For unpaid wages;
5. For compensatory damages;
6. For penalties;
7. For civil penalties;
8. For waiting time penalties;
9. For actual damages;
10. For statutory damages;
11. For equitable relief, including injunctive relief;
12. For reasonable attorney's fees and costs;
13. For special and general damages;

- 1 14. For Restitution and disgorgement of all ill-gotten profits, including unpaid wages;
2 15. For all interest accrued to date;
3 16. For post judgment interest;
4 17. For such other relief the Court deems just and proper.

5 Dated: December 23, 2021

THE JAMI LAW FIRM P.C.

6
7 By: 
8 Tamim Jami
9 Attorney for Plaintiffs
10 CONSTANCE COOPER
11 YADIRA IGLESIAS
12 MARIA MARTINEZ
13 ILIANA VASQUEZ
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