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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SAVANNAH KELLY, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)**

SAVANNAH KELLY, on behalf of herself
and all others similarly situated, and as an
"aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

FIREHAWK PROTECTION EMS., a
California corporation; GILBERT VASQUEZ,
a natural person; and DOES 1-50, inclusive,

Defendants.

Case No. **CIV SB 2200443**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

BY FAX



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1 Plaintiff, Savannah Kelly (hereafter “Plaintiff” or “Kelly”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants FIREHAWK
7 PROTECTION EMS., a California corporation, GILBERT VASQUEZ, a natural person, and
8 Does 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
11 relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Pay spit shift premium pay;

19 (G) Indemnify for necessary work-related expenditures;

20 (H) Issue only accurate and complete itemized wage statements;

21 (I) Timely pay wages upon termination of employment;

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class and
24 representative action.

25 **II. JURISDICTION AND VENUE**

26 3. This court has subject matter jurisdiction because the aggregate claims of Plaintiff,
27 inclusive of all relief, place more than \$25,000 in controversy.

28 4. There is no basis for federal question subject matter jurisdiction in this case.
Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.



6. Venue is proper in San Bernardino County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in San Bernardino County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

II. THE PARTIES

7. Plaintiff Savannah Kelly is a resident of California. On approximately January 13, 2021, the Defendants began to employ Kelly in San Pedro (Los Angeles County) in the position of hourly, non-exempt emergency services and emergency medical technician. The Defendants continuously employed her in that capacity until on or about February 8, 2021 when her employment ended.

8. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11090 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

9. Defendant FIREHAWK PROTECTION EMS. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

10. Defendant GILBERT VASQUEZ is an individual and a citizen of California based on Plaintiffs’ information and belief.

11. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

12. Based on Plaintiff’s information and belief, Defendant GILBERT VASQUEZ is natural person and an owner, director, officer, and/or managing agent of Defendants FIREHAWK PROTECTION EMS. who directly or indirectly, or through an agent or any other



1 person, employed or exercised control over the wages, hours, or working conditions of Plaintiff
2 and the Class. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing
3 Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

4 13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
6 is informed and believes and thereon alleges that said Defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
9 when ascertained.

10 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
13 within the course and scope of such agency, employment, direction and control, and with the
14 approval and ratification of each of the other Defendants.

15 15. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
17 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
18 Members or otherwise complying with their rights in accordance with applicable California labor
19 laws as alleged herein.

20 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
22 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
23 described class in accordance with applicable laws as alleged herein.

24 **III. CLASS ALLEGATIONS**

25 17. This action has been brought and may be maintained as a class action pursuant to
26 California Code of Civil Procedure section 382 because there is a well-defined community of
27 interest among the persons who comprise the readily ascertainable class defined below and
28 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.

18. **Class Definition:** The Class is defined as follows: All persons Defendants
employed in California as hourly, non-exempt workers, including emergency medical



1 technicians, emergency services employees, and individuals in similar positions, at any time
2 during the period beginning four years prior to the filing of this action and ending on the date that
3 final judgment is entered in this action (“Class” or “Class Members”).

4 19. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the class definition with greater specificity, by further division into
6 subclasses and/or by limitation to particular issues.

7 20. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 21. **Commonality and Predominance:** Common questions of law and fact exist as to
12 all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to pay all wages earned to Class Members for
15 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
16 meal period premium, rest period premium, rest and recovery, nonproductive time, reporting time,
17 split shift, and vacation wages;

18 B. Whether Defendants failed to provide the Class Members with all meal
19 periods in compliance with California law;

20 C. Whether Defendants failed to authorize and permit the Class Members to
21 take all rest periods in compliance with California law;

22 D. Whether Defendants failed to indemnify the Class Members for the
23 reasonable expenses they incurred during the course of performing their duties;

24 E. Whether Defendants knowingly and intentionally failed to provide the
25 class with accurate and complete itemized wage statements;

26 F. Whether Defendants willfully failed to provide the class with timely final
27 wages;

28 G. Whether Defendants engaged in unfair competition within the meaning of
Business and Professions Code sections 17200, et seq., with respect to the Class; and

H. Whether Class Members are entitled to restitution of money or property
that Defendants may have acquired from them through alleged Labor Code violations.



22. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

23. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

24. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

25. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

26. The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period,



1 Plaintiff and the Class Members were covered by the Wage Order because Defendants operated,
2 and Plaintiff and the Class Members worked for, one or more establishments operated as
3 ambulance transportation of medical patients. Accordingly, Plaintiff and the Class are entitled to
4 the protections the Wage Order provides.

5 27. On approximately January 13, 2021, the Defendants began to employ Kelly in San
6 Pedro (Los Angeles County) in the position of hourly, nonexempt emergency services and
7 emergency medical technician. The Defendants continuously employed her in that capacity until
8 on or about February 8, 2021 when her employment ended.

9 28. At all relevant times, the Defendants issued wages to Kelly and all of the other
10 Class Members on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all
11 relevant times, the Defendants classified Kelly and all of the other Class Members as non-exempt
12 employees entitled to the protections of the Labor Code and the Wage Order.

13 29. At all relevant times, the Defendants failed to compensate Kelly and all of the
14 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
15 Defendants required Plaintiff and the Class Members to work on-call without pay on 24-hour
16 "availability" shifts. Defendants restricted travel by Plaintiff and the Class Members during these
17 shifts and imposed other restrictions on them during such shifts. Defendants also required Plaintiff
18 and the Class Members to perform work without pay before their shifts began and after they ended.
19 This unpaid work involved completion of paperwork and filling out information on the work-
20 issued tablet, and cleaning the ambulances. This unpaid work also included time spent at the
21 residences of patients.

22 30. At all relevant times, the Defendants failed to compensate Plaintiff and the Class
23 Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week,
24 and for the first eight hours of the seventh day of the workweek. As explained above, Defendants
25 required Plaintiff and the Class Members to engage in several work-related activities without pay.
26 Because the work Plaintiff and the Class Members performed exceeded eight hours in a day and
27 40 hours in a week, and included work on the seventh day of the workweek, Defendants should
28 have paid them at overtime premium rates of 1 and 1/2 times their regular rates of pay for the
unpaid activities described above.

31. At all relevant times, the Defendants failed to compensate Plaintiff and the Class
Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first



1 eight of the seventh day of the workweek. Because the work Plaintiff and the Class Members
2 performed exceeded 12 hours in a day and eight hours on the seventh day of the workweek,
3 Defendants should have paid them at double-time premium rates of two times their regular rates
4 of pay for the unpaid activities described above.

5 32. At all relevant times, the Defendants failed to provide Plaintiff and the Class
6 Members with all timely 30-minute, off-duty meal periods. Gilbert Vasquez instructed Plaintiff
7 and the Class Members that they were not allowed to have any breaks - "when it's on my time."
8 The Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
9 and the Class Members with meal periods as required by law.

10 33. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
11 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
12 worked or major portion thereof. As stated above, Gilbert Vasquez instructed Plaintiff and the
13 Class Members that they were not allowed to have any breaks - "when it's on my time." Vasquez
14 also told Plaintiff and the Class Members, "You need to work [during breaks] because I am paying
15 you for your work." He prohibited Plaintiff and the Class Members from using a restroom until
16 they had dropped off their patients. The Defendants also failed to pay premium wages for days on
17 which they failed to authorize and permit Plaintiff and all of the other Class Members to take rest
18 breaks as required by law.

19 34. At all relevant times, the Defendants failed to pay Plaintiff and all of the other
20 Class Members with split shift premiums as required by the Wage Order. Defendants only paid
21 Plaintiff and the Class Members \$13.00 per hour to work two shifts in the same day. They did not
22 pay them a split shift premium on such days.

23 35. At all relevant times, the Defendants required Plaintiff and all of the other Class
24 Members to incur certain business expenses in the course of performing their duties. The
25 Defendants required Plaintiff and all of the other Class Members to supply mobile phones, telecom,
26 uniforms to perform their job duties. However, the Defendants did not provide these items and did
27 not reimburse Plaintiff and the other Class Members for these items. Defendants required Plaintiff
28 and the Class Members to utilize a mobile application, "Zello," to record their work hours, and to
complete other work for Defendants. Defendants did not reimburse Plaintiff and the Class
Members for mobile phone usage nor offer them mobile phones to record their work. Defendants
also required Plaintiff and the Class Members to purchase special shoes and tactical pants as part



1 of their employee uniform. Defendants did not reimburse Plaintiff and the Class Members for these
2 uniform items nor offer them shoes and tactical pants to record their work.

3 36. At all relevant times, the Defendants failed to issue to Kelly and all of the other
4 Class Members complete and accurate wage statements that state all hours worked at the correct
5 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
6 the wage statements they issued to Kelly and all of the other Class Members the unpaid wages
7 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
8 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
9 premium wages earned, all split shift premium wages earned, all hours work at each rate of pay,
and related information.

10 37. At all relevant times, the Defendants also failed to timely pay Kelly and all of the
11 other Class Members all earned wages as described above during and at the conclusion of
12 employment.

13 38. At all relevant times, the Defendants failed to maintain accurate employee records
14 of Kelly and all of the other Class Members.

15 39. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
unlawful practices and policies, Plaintiff and the Class Members were:

- 16 i. Not provided with all off duty meal periods;
- 17 ii. Not authorized and permitted to take all rest break periods;
- 18 iii. Not paid one hour's pay for each workday in which Defendants failed to
19 authorize and permit them to take one or more timely rest periods;
- 20 iv. Not paid one hour's pay for each workday in which Defendants failed to
21 provide them with one or more timely meal periods;
- 22 v. Not paid all wages earned, including, but not limited to, minimum, regular,
23 overtime, and doubletime wages for work performed while clocked out;
- 24 vi. Not indemnified for all necessary business expenditures incurred during
the discharge of their duties;
- 25 vii. Not provided with accurate and complete wage statements; and
- 26 viii. Not timely paid all earned and unpaid wages at the time their employment
27 ended.

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FIRST CAUSE OF ACTION

**FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE
CORRECT RATES**

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

40. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

41. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

**A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
THE CORRECT RATES OF PAY**

42. Section 2 of the Wage Order defines “hours worked” as “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, whether or not required to do so.”

43. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.

44. Section 4 of the Wage Order requires an employer to pay non-exempt employees



1 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 45. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
5 in one workday and any work in excess of 40 hours in any one workweek and the
6 first eight hours worked on the seventh day of work in any one workweek shall be
7 compensated at the rate of no less than one and one-half times the regular rate of
8 pay for an employee. Any work in excess of 12 hours in one day shall be
9 compensated at the rate of no less than twice the regular rate of pay for an
10 employee. In addition, any work in excess of eight hours on any seventh day of a
11 workweek shall be compensated at the rate of no less than twice the regular rate of
12 pay of an employee. Nothing in this section requires an employer to combine more
13 than one rate of overtime compensation in order to calculate the amount to be paid
14 to an employee for any hour of overtime work.

15 46. Labor Code section 1194 invalidates any agreement between an employer and an
16 employee to work for less than the minimum wage required under the applicable Wage Order.

17 47. Labor Code section 1197 makes it unlawful for an employer to pay an employee
18 less than the minimum wage required under the applicable Wage Order for all hours worked
19 during a payroll period.

20 48. Labor Code section 1198 makes it unlawful for an employer to employ an
21 employee under conditions that violate the Wage Order.

22 49. In conjunction, these provisions of the Labor Code require employers to pay non-
23 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
24 worked, including unrecorded hours when the employer knew or reasonably should have known
25 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
26 Cal.4th 575, 585.)

27 50. At all relevant times during the applicable limitations period, Defendants failed to
28 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
doubletime hours, respectively, that they worked at the correct rates of pay.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked at the correct



1 rates of pay as required by California law.

2 **B. FAILURE TO PAY SPLIT SHIFT PREMIUMS**

3 52. Wage Order § 2 (M) defines a “Shift” as “designated hours of work by an
4 employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2
5 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the
6 employer, other than bona fide rest or meal periods.”

7 53. Wage Order § 4 (C) pertaining to “Minimum Wages” states: “When an employee
8 works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the
9 minimum wage for that workday, except when the employee resides at the place of employment.”

10 54. Under Labor Code § 1197, “The minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.”

13 55. The Defendants directed Plaintiff and all of the Class Members to regularly work
14 split shifts. However, the Defendants intentionally failed to pay Plaintiff and all of the Class
15 Members the equivalent of a sum greater than one hour’s pay at the minimum wage in addition
16 to the minimum wage for a workday. Plaintiff is informed and believes and thereon alleges that,
17 at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which
18 resulted in Defendants’ failure to pay Plaintiff and the other Class Members the equivalent of a
19 sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a
20 workday as required by California law.

21 56. At all relevant times, Defendants required Plaintiff and the Class Members to
22 work on-call without pay on 24-hour "availability" shifts. Defendants restricted travel by Plaintiff
23 and the Class Members during these shifts and imposed other restrictions on them during such
24 shifts. Defendants only paid Plaintiff and the Class Members \$13.00 per hour to work two shifts
25 in the same day. They did not pay them a split shift premium on such days. In so doing, the
26 Defendants violated Labor Code §§ 1197 and 1198.

27 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
28 **LABOR CODE**

57. In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision regulating



1 minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation.

5 (b) For purposes of this section, the term “other person acting on
6 behalf of an employer” is limited to a natural person who is an
7 owner, director, officer, or managing agent of the employer, and
8 the term “managing agent” has the same meaning as in subdivision
9 (b) of Section 3294 of the Civil Code.

10 At all relevant times, Gilbert Vasquez was an employer of Plaintiff and all of the other Class
11 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
12 employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or other
13 person, employed and exercised control over the wages, hours, and/or working conditions of the
14 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
15 On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages,
16 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
17 relief against Gilbert Vasquez that is the same as the award of against the other Defendants on the
18 same grounds for which Plaintiff seeks against the Defendants.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

21 **Lab. Code §§ 226.7 and 512**

22 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

23 58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 59. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

27 60. In relevant part, California Labor Code § 1198 states:

28 The maximum hours of work and the standard conditions of labor fixed by the
commission shall be the maximum hours of work and the standard conditions of
labor for employees. 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.

61. In relevant part, In relevant part, California Labor Code § 512 states:



1 An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total
4 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
employer and employee.

5 An employer shall not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with
7 a second meal period of not less than 30 minutes, except that if the
8 total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

9 62. In relevant part, Section 11 of the Wage Order states:

10 Meal Periods:

- 11
- 12 (A) No employer shall employ any person for a work period of more
13 than five (5) hours without a meal period of not less than 30
14 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.
- 15
- 16 (B) An employer may not employ an employee for a work period of
17 more than ten (10) hours per day without providing the employee
18 with a second meal period of not less than 30 minutes, except that
19 if the total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.
- 20
- 21 (C) Unless the employee is relieved of all duty during a 30 minute meal
22 period, the meal period shall be considered an "on duty" meal
23 period and counted as time worked. An "on duty" meal period shall
24 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.
- 25
- 26 (D) If an employer fails to provide an employee a meal period in
27 accordance with the applicable provisions of this Order, the
28 employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that the
meal period is not provided.



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(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

63. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or rest period is not provided.

64. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

65. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Gilbert Vasquez instructed Plaintiff and the Class Members that they were not allowed to have any breaks - "when it's on my time."

66. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy

1 which resulted in Defendants not providing the and the Class Members with all off-duty meal
2 periods required by California law.

3 68. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in amounts subject to proof to the extent they were not paid additional wages
5 owed for all meal periods not provided to them.

6 69. By reason of the above, Plaintiff and the Class Members are entitled to premium
7 wages for workdays in which one or more meal periods were not provided to them pursuant to
8 California Labor Code § 226.7.

9 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
10 **LABOR CODE**

11 70. In relevant part, Labor Code section 558.1 states:

- 12 (c) Any employer or other person acting on behalf of an employer,
13 who violates, or causes to be violated, any provision regulating
14 minimum wages or hours and days of work in any order of the
15 Industrial Welfare Commission, or violates, or causes to be
16 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation.
- 18 (d) For purposes of this section, the term "other person acting on
19 behalf of an employer" is limited to a natural person who is an
20 owner, director, officer, or managing agent of the employer, and
21 the term "managing agent" has the same meaning as in subdivision
22 (b) of Section 3294 of the Civil Code.

23 At all relevant times, Gilbert Vasquez was an employer of Plaintiff and all of the other Class
24 Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
25 employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or other
26 person, employed and exercised control over the wages, hours, and/or working conditions of the
27 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
28 On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages,
interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related
relief against Gilbert Vasquez that is the same as the award of against the other Defendants on
the same grounds for which Plaintiff seeks against the Defendants.

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THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

71. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

72. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

73. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. 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.

74. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(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 compensation for each workday that the rest period is not provided.

75. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the



Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or rest period is not provided.

76. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

77. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. As stated above, Gilbert Vasquez instructed Plaintiff and the Class Members that they were not allowed to have any breaks - "when it's on my time." Vasquez also told Plaintiff and the Class Members, "You need to work [during breaks] because I am paying you for your work." He prohibited Plaintiff and the Class Members from using a restroom until they had dropped off their patients.

78. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

79. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.



1 80. Defendants failed to provide Plaintiff with all required rest breaks in accordance
2 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
3 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
4 which resulted in Defendants not providing the Class Members with all rest breaks required by
5 California law.

6 81. Defendants failed to pay Plaintiff the additional wages required by California
7 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
8 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
9 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
10 Class Members with additional wages for all rest breaks not provided to them as required by
11 California Labor Code § 226.7.

12 82. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
13 suffered damages in amounts subject to proof to the extent they were not paid additional wages
14 owed for all rest breaks not provided to them.

15 83. By reason of the above, Plaintiff and the Class Members are entitled to premium
16 wages for workdays in which one or more rest breaks were not provided to them pursuant to
17 California Labor Code § 226.7.

18 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
19 **LABOR CODE**

20 84. In relevant part, Labor Code section 558.1 states:

- 21 (a) Any employer or other person acting on behalf of an employer,
22 who violates, or causes to be violated, any provision regulating
23 minimum wages or hours and days of work in any order of the
24 Industrial Welfare Commission, or violates, or causes to be
25 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
26 held liable as the employer for such violation.
- 27 (b) For purposes of this section, the term "other person acting on
28 behalf of an employer" is limited to a natural person who is an
owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

At all relevant times, Gilbert Vasquez was an employer of Kelly and all of the other Class
Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other



1 employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or other
2 person, employed and exercised control over the wages, hours, and/or working conditions of the
3 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
4 On behalf of herself and all of the other Class Members, Kelly seeks an award of unpaid wages,
5 interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related
6 relief against Gilbert Vasquez that is the same as the award of against the other Defendants on
7 the same grounds for which Plaintiff seeks against the Defendants.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO INDEMNIFY**

10 **Lab. Code § 2802**

11 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

12 85. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

13 86. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
14 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
15 consequence of the discharge of his or her duties."

16 87. California Labor Code § 1198 prohibits employers from employing their
17 employees under conditions prohibited by the Wage Order.

18 88. At all relevant times, Defendants required Plaintiff and the Class Members to incur
19 certain business expenses in the course of performing their duties.

20 89. As described above, the Defendants required Plaintiff and all of the other Class
21 Members to incur certain business expenses in the course of performing their duties. The
22 Defendants required Kelly and all of the other Class members to supply mobile phones, telecom,
23 uniforms to perform their job duties. However, the Defendants did not provide these items and
24 did not reimburse Plaintiff and the other Class members for these items. Defendants required
25 Plaintiff and the Class Members to utilize a mobile application, "Zello," to record their work
26 hours, and to complete other work for Defendants. Defendants did not reimburse Plaintiff and the
27 Class Members for mobile phone usage nor offer them mobile phones to record their work.
28 Defendants also required Plaintiff and the Class Members to purchase special shoes and tactical
pants as part of their employee uniform. Defendants did not reimburse Plaintiff and the Class
Members for these uniform items nor offer them shoes and tactical pants to record their work.

90. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

91. In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Gilbert Vasquez was an employer of Plaintiff and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Kelly seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Gilbert Vasquez that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

92. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



1 93. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement showing:

- 4 i. Gross wages earned;
- 5 ii. Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 8 iii. The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis;
- 10 iv. All deductions, provided that all deductions made on written orders of the
11 Employee may be aggregated and shown as one item;
- 12 v. Net wages earned;
- 13 vi. The inclusive dates of the period for which the employee is paid;
- 14 vii. The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement;
- 18 viii. The name and address of the legal entity that is the employer; and
- 19 ix. All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 94. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
22 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
23 the employer fails to provide accurate and complete information as required by California Labor
24 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
25 alone one or more of the following:

- 26 A. The amount of the gross wages or net wages paid to the employee during
27 the pay period or any of the other information required to be provided on the itemized wage
28 statement pursuant to California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor



1 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
2 and address of the legal entity that secured the services of the employer during the pay period;

3 D. The name of the employee and only the last four digits of his or her
4 social security number or an employee identification number other than a social security number;
5 and

6 E. The number of piece-rate units earned and the piece rate.

7 95. "Promptly and easily determine," as stated in California Labor Code § 226(e),
8 means a reasonable person would be able to readily ascertain the information without reference
9 to other documents or information.

10 96. As alleged herein, at all relevant times during the applicable limitations period,
11 Defendants violated California Labor Code section 226 because they did not properly and
12 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
13 the corresponding number of hours worked at each rate by the employee and other requirements
14 of California Labor Code section 226. Defendants failed to state in the wage statements they
15 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
16 including, but not limited to, regular and overtime wages for work they performed off-the-clock
17 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
18 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
19 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
20 Members that state all minimum wages earned, all regular wages earned, all doubletime wages
21 earned, all meal period premium wages earned, all rest break premium wages earned, all split
22 shift premium wages earned, and all hours worked at each rate of pay.

23 97. Defendants' failure to provide Plaintiff and the other Class Members with accurate
24 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
25 the other Class Members with accurate wage statements but intentionally provided wage
26 statements that Defendants knew were not accurate.

27 98. As a result of being provided with inaccurate wage statements by Defendants,
28 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
wage statements were violated and they were misled about the amount of wages they had actually
earned and were owed. In addition, the absence of accurate information on their wage statements
prevented immediate challenges to Defendants' unlawful pay practices, has required discovery



1 and mathematical computations to determine the amounts of wages owed, has caused difficulty
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
4 and the other Class Members were not able to ascertain from the wage statements whether
5 Defendants complied with their obligations under California Labor Code section 226(a).

6 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
7 **LABOR CODE**

8 99. In relevant part, Labor Code section 558.1 states:

- 9 (a) Any employer or other person acting on behalf of an employer,
10 who violates, or causes to be violated, any provision regulating
11 minimum wages or hours and days of work in any order of the
12 Industrial Welfare Commission, or violates, or causes to be
13 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
14 held liable as the employer for such violation.
- 15 (b) For purposes of this section, the term “other person acting on
16 behalf of an employer” is limited to a natural person who is an
17 owner, director, officer, or managing agent of the employer, and
18 the term “managing agent” has the same meaning as in subdivision
19 (b) of Section 3294 of the Civil Code.

20 At all relevant times, Gilbert Vasquez was an employer of Kelly and all of the other Class
21 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
22 employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or other
23 person, employed and exercised control over the wages, hours, and/or working conditions of the
24 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
25 On behalf of herself and all of the other Class Members, Kelly seeks an award of unpaid wages,
26 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
27 relief against Gilbert Vasquez that is the same as the award of against the other Defendants on
28 the same grounds for which Plaintiff seeks against the Defendants.

29 **SIXTH CAUSE OF ACTION**

30 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

31 **(Lab. Code §§ 201, 202, and 203)**

32 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

33 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



101. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

102. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

103. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

104. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Kelly, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and split shift premium wages. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class members whose employment ended their final paychecks until the next regular pay day following the termination.

105. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

106. Plaintiff is informed and believes that Defendants’ failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

107. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

108. In relevant part, Labor Code section 558.1 states:



1 (a) Any employer or other person acting on behalf of an employer,
2 who violates, or causes to be violated, any provision regulating
3 minimum wages or hours and days of work in any order of the
4 Industrial Welfare Commission, or violates, or causes to be
5 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
6 held liable as the employer for such violation.

7 (b) For purposes of this section, the term “other person acting on
8 behalf of an employer” is limited to a natural person who is an
9 owner, director, officer, or managing agent of the employer, and
10 the term “managing agent” has the same meaning as in subdivision
11 (b) of Section 3294 of the Civil Code.

12 109. At all relevant times, Gilbert Vasquez was an employer of Kelly and all of the
13 other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and
14 the other employers identified above. Gilbert Vasquez directly or indirectly, or through an agent
15 or other person, employed and exercised control over the wages, hours, and/or working conditions
16 of the Class Members, and caused the violations to the Labor Code and the Wage Order described
17 above. On behalf of herself and all of the other Class Members, Kelly seeks an award of unpaid
18 wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and
19 related relief against Gilbert Vasquez that is the same as the award of against the other Defendants
20 on the same grounds for which Plaintiff seeks against the Defendants.

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

24 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

25 110. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 111. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class Members have been employees of Defendants and entitled to the benefits and protections
28 of the Business and Professions Code §§ 17200, *et seq.*

112. The unlawful conduct of Defendants alleged herein amount to and constitutes
unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
gained a competitive advantage over other comparable companies doing business in California
that comply with their legal obligations to compensate employees for all earned wages.



113. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages, missed meal period premium wages, missed rest period premium wages, split shift premium wages, phone expenses, telecom expenses, uniform expense, and comparable money and property.

114. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

115. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

116. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

117. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning October 15, 2020, and ending on the date that final judgment is entered in this action.

118. Labor Code § 204 states

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

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in



1 excess of the normal work period during the current pay period are itemized as
2 corrections on the paystub for the next regular pay period. Any corrections set
3 out in a subsequently issued paystub shall state the inclusive dates of the pay
4 period for which the employer is correcting its initial report of hours worked.

5 (c) However, when employees are covered by a collective bargaining
6 agreement that provides different pay arrangements, those arrangements shall
7 apply to the covered employees.

8 (d) The requirements of this section shall be deemed satisfied by the payment
9 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
10 more than seven calendar days following the close of the payroll period.

11 119. Defendants paid wages to employees on regular intervals. Defendants, however,
12 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
13 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
14 Employees on such intervals for all wages earned and all hours worked.

15 120. During the applicable time period, Defendants violated California Labor Code §§
16 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

17 121. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
18 behalf of themselves and other current or former employees, to bring a civil action to recover
19 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

20 122. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
21 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
22 §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802 during the
23 applicable limitations period in the following amounts:

24 A. For violations of California Labor Code § 204, one hundred dollars
25 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
26 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
27 (penalty amounts established by California Labor Code § 210).

28 B. For violations of California Labor Code § 226(a), two hundred fifty
dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
(\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars



1 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
2 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
3 established by California Labor Code § 558).

4 D. For violations of California Labor Code § 1174, five hundred dollars
5 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
6 amounts established by Labor Code § 1174.5).

7 E. For violations of California Labor Code § 1197, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
9 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
10 pay period (regardless of whether the initial violations were intentionally committed) (penalty
11 amounts established by California Labor Code § 1197.1).

12 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
13 1198 and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
14 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
15 period for each subsequent violation (penalty amounts established by California Labor Code §
16 2699(f)(2)).

17 123. Plaintiff has complied with the procedures for bringing suit specified in
18 California Labor Code § 2699.3. By letter dated October 15, 2021 Plaintiff filed written notice
19 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
20 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
21 to have been violated, including the facts and theories to support the alleged violations. A true
22 and correct copy of the notice to the LWDA dated October 15, 2021 is attached as Exhibit A.
23 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. Plaintiff anticipates
24 that the LWDA will provide written notice to Plaintiff informing him that it does not intend to
25 investigate these allegations.

26 124. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
27 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
28 connection with their claims for civil penalties.

26 **V. PRAYER FOR RELIEF**

27 125. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
28 relief and judgment against Defendants as follows:



- 1 A. An order that the action be certified as a class action with respect to
2 Plaintiff's claims for violations of California law;
3 B. An order that Plaintiff be appointed class representative;
4 C. An order that counsel for Plaintiff be appointed class counsel;
5 D. Unpaid wages, including minimum, regular, overtime, double-time, split
6 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
7 time, and reporting time wages;
8 E. Liquidated damages;
9 F. Statutory penalties, including waiting time penalties;
10 G. Civil penalties;
11 H. Restitution;
12 I. Declaratory relief;
13 J. Actual damages;
14 K. Pre-judgment interest;
15 L. Costs of suit;
16 M. Reasonable attorneys' fees; and
17 N. Such other relief as the Court deems just and proper.

18 **VI. DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on
20 all issues so triable.

21 Respectfully submitted,

22 THE SPIVAK LAW FIRM

23 Dated: December 22, 2021

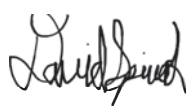
24 By: 
25 DAVID G. SPIVAK,
26 CAROLINE TAHMASSIAN
27 MAYA CHEAITANI
28 Attorneys for Plaintiff, SAVANNAH KELLY,
 and all others similarly situated



EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

October 15, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Savannah Kelly / Firehawk Protection

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Savannah Kelly (hereafter “Kelly” or “Complainant”) provides notice that Firehawk Protection EMS., a California corporation, Gilbert Vasquez, and related entities (collectively “the Firehawk Protection Employers” or “the Employers”) violated her rights and those of all other individuals the Firehawk Protection Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including emergency medical technicians and emergency services employees, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code provisions. On behalf of herself and all other Aggrieved Employees, Kelly hereby provides this notice to the Labor & Workforce Development Agency and the Firehawk Protection Employers and their agents and representatives.

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At all relevant times, the Firehawk Protection Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Kelly and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 13, 2021, the Firehawk Protection Employers began to employ Kelly in the High Desert, Loma Linda, Palm Springs (Los Angeles County) and nearby locations in the position of hourly, nonexempt emergency services and emergency medical technician. The Firehawk Protection Employers continuously employed her in that capacity until on or about February 8, 2021 when her employment ended.

At all relevant times, the Firehawk Protection Employers issued wages to Kelly and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Firehawk Protection Employers classified Kelly and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Firehawk Protection Employers required Kelly and the Aggrieved Employees to work on-call without pay on 24-hour "availability" shifts. The Firehawk Protection Employers restricted travel by Kelly and the Aggrieved Employees during these shifts and imposed other restrictions on them during such shifts. The Firehawk Protection Employers also required Kelly and the Aggrieved Employees to perform work without pay before their shifts began and after they ended. This unpaid work involved completion of paperwork and filling out information on the work-issued tablet, and cleaning the ambulances. This unpaid work also included time spent at the residences of patients.

The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As explained above, the Firehawk Protection Employers required Kelly and the Aggrieved Employees to engage in several work-related activities without pay. Because the work Kelly and the Aggrieved Employees performed exceeded eight hours in a day and 40 hours in a week, and included work on the seventh day of the workweek, the Firehawk Protection Employers should have paid them at overtime premium rates of 1½ times their regular rates of pay for the unpaid activities described above.

The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Furthermore, because the work Kelly and the Aggrieved Employees performed exceeded 12 hours in a day and eight hours on the seventh day of the workweek, the Firehawk Protection Employers should have paid them at double-time premium rates of two times their regular rates of pay for the unpaid activities described above.

At all relevant times, the Firehawk Protection Employers failed to provide Kelly and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Gilbert Vasquez instructed Kelly and the Aggrieved Employees that they were not allowed to have any breaks - "when it's on my time." The Firehawk Protection Employers also failed to pay premium wages for days on which it failed to provide Kelly and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Firehawk Protection Employers failed to authorize and permit Kelly and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As stated above, Gilbert Vasquez instructed Kelly and the Aggrieved Employees that they were not allowed to have any breaks - "when it's on my time." Vasquez also told Kelly and the Aggrieved Employees, "You need to work [during breaks] because I am paying you for your work." He prohibited Kelly and the Aggrieved

Employees from using a restroom until they had dropped off their patients. The Firehawk Protection Employers also failed to pay premium wages for days on which it failed to authorize and permit Kelly and all of the other Aggrieved Employees to take rest breaks as required by law.

The Firehawk Protection Employers failed to pay Kelly and all of the other Aggrieved Employees with split shift premiums as required by the Wage Order. The Firehawk Protection Employers only paid Kelly and the Aggrieved Employees \$13.00 per hour to work two shifts in the same day. They did not pay them a split shift premium on such days.

At all relevant times, the Firehawk Protection Employers required Kelly and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Firehawk Protection Employers required Kelly and all of the other Aggrieved Employees to supply mobile phones, telecom, and uniforms to perform their job duties. However, the Firehawk Protection Employers did not provide these items and did not reimburse Kelly and the other Aggrieved Employees for these items. The Firehawk Protection Employers required Kelly and the Aggrieved Employees to utilize a mobile application, "Zello," to record their work hours, and to complete other work for the Firehawk Protection Employers. The Firehawk Protection Employers did not reimburse Kelly and the Aggrieved Employees for mobile phone usage nor offer them mobile phones to record their work. The Firehawk Protection Employers also required Kelly and the Aggrieved Employees to purchase special shoes and tactical pants as part of their employee uniform. The Firehawk Protection Employers did not reimburse Kelly and the Aggrieved Employees for these uniform items nor offer them shoes and tactical pants to record their work.

At all relevant times, the Firehawk Protection Employers failed to issue to Kelly and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Firehawk Protection Employers knowingly and intentionally failed to state on the wage statements they issued to Kelly and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state

all minimum wages earned, all regular wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all split shift premium wages earned, all earned wages subject to discount, the employer's name and address, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, and all hours worked at each rate of pay.

The Firehawk Protection Employers also failed to timely pay Kelly and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Firehawk Protection Employers failed to maintain accurate employee records of Kelly and all of the other Aggrieved Employees.

For the reasons stated herein, Kelly alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Firehawk Protection Employers failed to pay Kelly and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Firehawk Protection Employers failed to provide Kelly and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Firehawk Protection Employers failed to authorize and permit Kelly and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees at one hour's pay for

each day in which the Firehawk Protection Employers failed to provide them with one or more meal periods as required by law;

- (e) The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees at one hour's pay for each day in which the Firehawk Protection Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Firehawk Protection Employers failed to pay Kelly and all of the other Aggrieved Employees with split shift premiums as required by the Wage Order;
- (g) The Firehawk Protection Employers failed to indemnify Kelly and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The Firehawk Protection Employers knowingly and intentionally failed to provide Kelly and all of the other Aggrieved Employees with accurate and complete wage statements;
- (i) The Firehawk Protection Employers willfully failed to timely pay Kelly and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Firehawk Protection Employers and when their employment ended; and
- (j) The Firehawk Protection Employers failed to maintain accurate employment records pertaining to Kelly and all of the other Aggrieved Employees.

Accordingly, Kelly now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Firehawk Protection Employers' alleged violations of the Labor Code and the Wage Order.

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The Wage Order

The Wage Order applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean, “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Firehawk Protection “Employers, Kelly, and all of the Aggrieved Employees were covered by the Wage Order because the Firehawk Protection Employers operated, and Kelly, and all of the Aggrieved Employees worked for, one or more establishments operated as ambulance transportation of medical patients. Accordingly, Kelly and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay **(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “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 the minimum so fixed is unlawful.”

In relevant part, section 2(H) of the Wage Order states,

“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, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee 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.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Firehawk Protection Employers required Kelly and the Aggrieved Employees to work on-call without pay on 24-hour "availability" shifts. The Firehawk Protection Employers restricted travel by Kelly and the Aggrieved Employees during these shifts and imposed other restrictions on them during such shifts. The Firehawk Protection Employers also required Kelly and the Aggrieved Employees to perform work without pay before their shifts began and after they ended. This unpaid work involved completion of paperwork and filling out information on the work-issued tablet, and cleaning the ambulances. This unpaid work also included time spent at the residences of patients. As explained above, the Firehawk Protection Employers required Kelly and the Aggrieved Employees to engage in several work-related activities without pay. Because the work Kelly and the Aggrieved Employees performed exceeded eight hours in a

day and 40 hours in a week and work on the seventh day of the workweek, the Firehawk Protection Employers should have paid them at overtime premium rates of 1½ times their regular rates of pay for the unpaid activities described above. Furthermore, because the work Kelly and the Aggrieved Employees performed exceeded 12 hours in a day and eight hours on the seventh day of the workweek, the Firehawk Protection Employers should have paid them at double-time premium rates of two times their regular rates of pay for the unpaid activities described above.

At all relevant times during the applicable limitations period, the Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Kelly now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Pay Split Shift Premiums
(Lab. Code §§ 1197, 1198)

Wage Order § 2 (M) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “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 the minimum so fixed is unlawful.”

The Firehawk Protection Employers directed Kelly and all of the Aggrieved Employees to regularly work split shifts. However, the Firehawk Protection Employers intentionally failed to pay Kelly and all of the Aggrieved Employees the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. The Firehawk Protection Employers only paid Kelly and the Aggrieved Employees \$13.00 per hour to work two shifts in the same day. They did not pay them a split shift premium on such days. In so doing, the Firehawk Protection Employers violated Labor Code §§ 1197 and 1198. Accordingly, Kelly seeks civil penalties from the Firehawk Protection Employers on behalf of herself and all of the Aggrieved Employees

as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“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, whether or not required to do so.

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

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (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.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) 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.
- (D) 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 employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Firehawk Protection Employers failed to provide Kelly and all of the other Aggrieved Employees with all timely meal periods. The Firehawk Protection Employers denied Kelly and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Gilbert Vasquez instructed Kelly and the Aggrieved Employees that they were not allowed to have any breaks - "when it's on my time." Furthermore, the Firehawk Protection Employers failed to pay premium wages for days on which they failed to provide Kelly and all of the other Aggrieved Employees with timely meal periods. Accordingly, Kelly now seeks civil penalties for these Labor Code violations that the Firehawk Protection Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“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, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (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 compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Firehawk Protection Employers failed to authorize and permit Kelly and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Firehawk Protection Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. As stated above, Gilbert Vasquez instructed Kelly and the Aggrieved Employees that they were not allowed to have any breaks - "when it's on my time." Vasquez also told Kelly and the Aggrieved Employees, "You need to work [during breaks] because I am paying you for your work." He prohibited Kelly and the Aggrieved Employees from using a restroom until they had dropped off their patients. Moreover, the Firehawk Protection Employers failed to pay Kelly and all of the other Aggrieved Employees premium wages on workdays the Firehawk Protection Employers failed to provide Kelly and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Kelly now seeks civil penalties for these Labor Code violations that the Firehawk Protection Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Firehawk Protection Employers required Kelly and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Firehawk Protection Employers required Kelly and all of the other Aggrieved Employees to supply mobile phones, telecom, and uniforms to perform their job duties. However, the Firehawk Protection Employers did not provide these items and did not reimburse Kelly and the other Aggrieved Employees for these items. The Firehawk Protection Employers required Kelly and the Aggrieved Employees to utilize a mobile application, "Zello," to record their work hours, and to complete other work for the Firehawk Protection Employers. The Firehawk Protection Employers did not reimburse Kelly and the Aggrieved Employees for mobile phone usage nor offer them mobile phones to record their work. The Firehawk Protection Employers also required Kelly and the Aggrieved Employees to purchase special shoes and tactical pants as part of their employee uniform. The Firehawk Protection Employers did not reimburse Kelly and the Aggrieved Employees for

these uniform items nor offer them shoes and tactical pants to record their work. Accordingly, Kelly seeks civil penalties for these Labor Code violations that the Firehawk Protection Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 Employer 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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 hourly rate by the employee.

At all relevant times during the applicable limitations period, the Firehawk Protection Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Firehawk Protection Employers failed to state in the wage statements they issued to Kelly and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Firehawk Protection Employers knowingly and intentionally failed to state on the wage statements they issued to Kelly and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all split shift premium wages earned, all earned wages subject to discount, the employer's name and address, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours worked at each rate of pay, nor

related information. Accordingly, Kelly seeks civil penalties for the Labor Code violations that the Firehawk Protection Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, split shift premium wages, deducted wages, and related compensation, at the intervals stated above. As a result, the Firehawk Protection Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Kelly now seeks civil penalties for the Labor Code violations that the Firehawk Protection Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully

withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Firehawk Protection Employers failed to pay Kelly and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Kelly, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, split shift premium wages, deducted wages and related compensation. By failing to pay Kelly and all of the other Aggrieved Employees as set forth above at the end of employment, the Firehawk Protection Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of

the other Aggrieved Employees, Kelly seeks civil penalties from the Firehawk Protection Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll

records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be

recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Firehawk Protection Employers failed to compensate Kelly and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all split shift premium wages earned, all earned wages subject to discount, the employer's name and address, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours worked at each rate of pay, and related information. As a result, the Firehawk Protection Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Kelly and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Kelly seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Gilbert Vasquez was an employer of Kelly and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Firehawk Protection Employers and the other employers identified above. Gilbert Vasquez directly or indirectly, or through an agent or

other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Kelly seeks the same civil penalties against Gilbert Vasquez on the same grounds for which she seeks civil penalties against the Firehawk Protection Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Savannah Kelly will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Savannah Kelly

Firehawk Protection EMS.
c/o Agent for service of process
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