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Superior Court of California,
County of San Diego

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

LOVELYN TADENA-CHUA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

ACUMEN FISCAL AGENT, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2021-00052766-CU-OE-CTL

Assigned to the Hon. Timothy B. Taylor

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Violations of the Unfair Competition Law
- 8-16. Claims for Civil Penalties under PAGA

Action Filed: Dec. 17, 2021

Trial Date: Not Set

1 Plaintiff LOVELYN TADENA-CHUA (“Plaintiff”), on behalf of a class of all other
2 similarly situated current and former employees and the State of California, brings this class and
3 representative action against Defendants ACUMEN FISCAL AGENT, LLC; and DOES 1 through
4 50 (collectively, “Defendants”), alleging as follows¹:

5 **INTRODUCTION**

6 1. This is a class and representative action filed for wage and hour violations of the
7 California Labor Code. Plaintiff works as a nurse for Defendants. Defendants paid regular straight
8 time hourly wages to Class Members for hours worked in excess of 40 in a workweek and 8 in a
9 workday, which is illegal. Defendants did not pay Labor Code § 226.7 premiums at the regular rate
10 of compensation for non-compliant meal periods and rest periods—including late, short, and missed
11 meal periods evident on the face of Defendants’ employment and payroll records. Defendants also
12 failed to allow employees to accrue paid sick leave and Covid Supplemental Paid Sick Leave. As a
13 result of these violations, Defendants failed to timely pay Class Members each pay period on
14 paydays and upon separation of employment, and thus are liable for waiting time and other
15 statutory penalties. Defendants’ employment policies and practices and payroll administration
16 systems enabled and facilitated these violations on a company-wide basis with respect to the Class
17 Members.

18 **JURISDICTION & VENUE**

19 2. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
20 California Constitution.

21 3. Venue as to each defendant is proper in this judicial district under Code of Civil
22 Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed
23 Plaintiff in this county, and committed some of the alleged violations in this county.

24
25
26 ¹ Plaintiff amends the original complaint pursuant to Labor Code § 2699.3(a)(2)(C), which
27 states “[n]otwithstanding any other provision of law [including C.C.P. § 472], a plaintiff may as a
28 matter of right amend an existing complaint to add a cause of action arising under this part [Labor
Code § 2698 et seq.] at any time within 60 days of the time periods specified in this part [i.e., after
the 65-day notice period has expired].”

PARTIES

A. Plaintiff Lovelyn Tadena-Chua

4. Plaintiff LOVELYN TADENA-CHUA is an individual over 18 years of age who worked for Defendants in San Diego County as an hourly, non-exempt nurse.

5. Plaintiff has been employed in California with Defendants since March 2020.

B. Defendant Acumen Fiscal Agent

6. Throughout the relevant statutory limitations periods, Defendant Acumen Fiscal Agent was a legal employer of Plaintiff and Class Members. (*See, e.g., Duffey v. Tender Heart Home Care Agency, LLC*, 31 Cal. App. 5th 232, 242.)

7. Plaintiff is informed, believes, and alleges that Defendant ACUMEN FISCAL AGENT, LLC is a corporation doing business and employing labor throughout California, including San Diego, California.

8. Plaintiff is informed, believes, and alleges that no class action asserting similar factual allegations has been filed against any of the named defendants within the preceding three years; and that more than two-thirds of the Class Members are citizens of the State of California.

9. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

10. Plaintiff is informed, believes, and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship.

11. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of

an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein. Defendants operate as employers of the Class in their operation of the La-Z-Boy Furniture Galleries and related operations.

12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

13. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the Class of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

GENERAL ALLEGATIONS

14. Defendants failed to pay overtime and double time to Class Members for hours in excess of eight in a workday or 40 in a workweek, as applicable. Instead, Defendants paid for those premium hours at the straight time hourly rate for Plaintiff and Class Members. To the extent Plaintiff or any Class Member was subject to Labor Code § 1454, Defendants nevertheless failed to pay at the lawful overtime/double time rates for hours worked in excess of nine in a workday or 45 in a workweek. The time records for Plaintiff and other Class Members reflect that Plaintiff worked in excess of eight hours and in excess of 12 hours in a single workday, but was paid at her straight time hourly rate, instead of one and one-half or two times her regular rate of pay. Defendants engaged in the same payroll practices with respect to other Class Members; Defendants were exclusively responsible for calculating and paying wages to Plaintiff and Class Members and are responsible for the underpayments.

15. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute meal periods to Plaintiff and Class Members within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation

1 of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g.,*
2 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are
3 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
4 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”])

5 16. When Defendants did not provide fully compliant meal periods, Defendants failed to
6 pay Class Members a meal period premium at the regular rate of compensation in violation of
7 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) “[T]ime records showing noncompliant
8 meal periods raise a rebuttable presumption of meal period violations, including at the summary
9 judgment stage.” (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.) Defendants’ policy
10 and practice of not paying all meal period premiums at the lawful rate is a matter of common
11 corporate policy and payroll administration such that it applies and affected all other Class
12 Members and are evident from the time records maintained by Defendants, which show late, short
13 and missed meal periods without an associated meal period premium on the corresponding
14 employee wage statement.

15 17. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for every
16 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
17 section 12 of the applicable IWC Wage Order. When Defendants did not provide a fully compliant
18 rest period to Plaintiff or other Class Members, Defendants failed to pay Claimant and other Class
19 Members a rest period premium at the lawful “regular rate of compensation” in violation of Labor
20 Code section 226.7.

21 18. Plaintiff is informed, believes, and alleges that Defendants failed to maintain lawful
22 meal and rest period policies in an employee handbook or other governing document that
23 adequately apprised Plaintiff and other Class Members of their respective rights under California
24 law.

25 19. Defendants failed to provide employees with paid sick leave as required by Labor
26 Code §§ 246 through 248.5, including regular and supplemental sick leave. Defendants failed to
27 provide notice of employees’ rights to such leave and also failed to maintain paid and supplemental
28 sick leave records, as required by Labor Code sections 247.5.

1 20. With respect to the unpaid wages and premiums owed to Plaintiff and Class
2 Members, Defendants failed to pay those wages on time each pay period or upon separation of
3 employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums owed
4 each pay period their employment, Defendants failed to timely pay all wages owed each pay day to
5 or upon separation of employment (or within 72 hours thereof) to those respective Class Members,
6 in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

7 21. Defendants equally failed in their affirmative obligation to provide accurate itemized
8 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
9 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
10 three distinct types of violations.

11 22. First, on each wage statement furnished, Defendants failed to accurately state the
12 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
13 Plaintiff and Class Members earned overtime at one and one-half times their regular rate of pay, but
14 were underpaid overtime on an hourly basis, and were deprived of all meal and rest period
15 premiums earned, resulting in an inaccurate itemization of gross and net wages earned on those
16 wage statements.

17 23. Second, on each wage statement furnished to Plaintiff and, on information and
18 belief, the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate by the
20 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
21 Class Members:

- 22 a. Do not accurately list the accurate applicable hourly overtime or double time
23 rate, as Plaintiff and Class Members were paid based on straight time rates;
- 24 b. Inaccurately included overtime hours in the “regular” hours category, making it
25 impossible to discern which hours are indeed non-overtime hours and which
26 hours are in fact overtime hours (*e.g.*, in excess of 8 in a workday, 40 in a
27 workweek, 12 in a workday, seventh consecutive day, etc.), resulting in an
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1 inaccurate statement of regular hours worked and OT hours worked on those
2 wage statements.

3 c. Inaccurately stated the hourly rate in effect for certain overtime and double time
4 hours, as Plaintiff and Class Members *earned* overtime at the rate required by
5 Labor Code section 510, yet were paid straight time hourly rates instead in those
6 affected pay periods.

7 24. Third, Defendants failed to state the last four digits of the Plaintiff and Class
8 Members' respective employee ID number or SSN, in violation of Labor Code section 226(a)(7).

9 25. Defendants' wage statement issues described above rendered the wage statements
10 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
11 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
12 Members as the sole documentary evidence of their respective earnings.

13 26. Plaintiff and Class Members suffered injury in the form of confusion regarding
14 amounts paid for hours worked, and in the form of concealment of the common payroll practices
15 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
16 this Complaint.

17 27. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
18 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
19 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
20 led to believe that the hourly rates and net and gross wages reflected were a complete and accurate
21 reflection of the wages actually earned under California law.

22 28. Defendants' wage statement violations were knowing and intentional as a matter of
23 law with respect to Plaintiff and California Class Members given that the legal obligation was not
24 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
25 Defendants nevertheless failed to comply despite the means and ability to do so.

26 29. Because of the violations set forth in this Complaint, including Defendants' failure
27 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay,
28 Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain

1 records showing accurate daily hours worked at the corresponding wage rate, and the wages paid to
2 each employee.

3 30. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
4 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
5 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
6 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
7 under California law.

8 **CLASS ACTION ALLEGATIONS**

9 31. ***Class Definition.*** The named individual Plaintiff seeks class certification under
10 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- 11 a. All individuals currently or formerly employed by Defendants in the State of
12 California as hourly non-exempt employees at any time from **December**
13 **17, 2017** through the time of trial in this action (the "Class" or "Class
14 Members" and the "Class Period").

15 32. Further, Plaintiff proposes the following subclasses:

- 16 a. All Class Members who separated from employment with Defendants at any
17 time from **December 17, 2018** through the time of trial in this action (the
18 "Waiting Time Subclass").
- 19 b. All Class Members who received a wage statement from Defendants at any
20 time from **December 17, 2020** through the time of trial in this action ("Wage
21 Statement Subclass").
- 22 c. All Class Members who worked shifts of five hours or more without a duty-
23 free meal period of at least 30 minutes, who were not paid one hour of pay at
24 the regular rate of compensation for each of those days ("Meal Period
25 Subclass").
- 26 d. All Class Members who worked shifts of four hours or major fraction thereof
27 without being authorized or permitted an uninterrupted rest period of at least
28

1 10 minutes, who were not paid one hour at the regular rate of compensation
2 for each of those days (“Rest Period Subclass”).

3 e. All Class Members who were not paid overtime or double time wages for all
4 overtime or double time hours worked each pay period (“Unpaid Wage
5 Subclass”).

6 33. Plaintiff reserves the right to move the Court to amend or modify the class
7 definitions and to establish additional classes and subclasses as appropriate.

8 34. **Numerosity.** The members of the Class are so numerous that joinder of all
9 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
10 of Defendants’ employment and payroll records. Plaintiff is informed, believes, and alleges there
11 are more than 40 Class Members.

12 35. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff
13 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
14 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
15 wage-and-hour class actions in California state and federal courts.

16 36. **Manageability.** This class action is manageable because the liability and damages to
17 Class Members can be ascertained by review of corporate and employer timekeeping and payroll
18 records along with other evidence that Defendants maintained and are required by law to maintain
19 under the California Labor Code, IWC Wage Orders and federal law. This class action is
20 manageable because the contact information and identity of percipient witnesses—namely,
21 Defendants’ employees (the putative class members)—is readily maintained by Defendants.

22 37. **Superiority.** A class action is superior to other means for adjudication of the claims
23 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
24 for the common issues to be resolved in a single forum, simultaneously and without duplication of
25 effort and expense.

26 38. **Commonality.** Common questions of law and fact and a community of interest
27 exists amongst Plaintiff and the Class. These common issues arise from the employment
28 relationship with Defendants and predominate over any individual issues.

39. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members.

40. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

41. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on

41. behalf of the State of California and the “aggrieved employees,” defined as follows:

All current and former non-exempt hourly employees who worked for Defendants in the State of California during the period of December 1, 2020 through the current date and the date of final judgment in this action (“PAGA Period”).

42. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the Private Attorney’s General Act. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]) Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the Labor Code violations committed by Defendants and alleged in this Complaint. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”]).

43. “Notwithstanding any other provision of law, any provision of this code providing for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved

employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

44. On December 1, 2021, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the “PAGA Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

45. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, Defendants did not give written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations.

46. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without any notice of cure from them or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code § 2699.

47. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Labor Code §§ 510 and 1194

48. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

49. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh

1 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
2 Orders (the “Hours and Days of Work” sections of the applicable orders).

3 50. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
4 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
5 to the full amount of the unpaid overtime wages, in addition to interest, attorneys’ fees, and costs to
6 the extent permitted by law, including under Labor Code section 1194.

7 **SECOND CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

9 **Labor Code §§ 226.7 and 512**

10 51. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 52. Defendants willfully failed in their affirmative obligation to consistently provide
12 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
13 beginning before the fifth hour of hour for each work period of more than five hours per day and a
14 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
15 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
16 Periods” sections of the applicable orders).

17 53. Further, Defendants willfully failed in their affirmative obligation to consistently pay
18 Plaintiff and Class Members one additional hour of pay at the respective regular rate of
19 compensation for each workday that a fully compliant meal period was not provided, in violation of
20 Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the “Meal Periods” sections
21 of the applicable orders).

22 54. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of meal
23 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
24 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees,
25 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

1 **THIRD CAUSE OF ACTION**
2 **REST PERIOD VIOLATIONS**

3 **Labor Code §§ 226.7 and 516**

4 55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 56. Defendants willfully failed in their affirmative obligation to consistently authorize
6 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
7 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
8 sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
9 applicable orders).

10 57. Further, Defendants willfully failed in their affirmative obligation to consistently pay
11 Plaintiff and Class Members one additional hour of pay at the respective regular rate of
12 compensation for each workday that a fully compliant rest period was not provided, in violation of
13 Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

14 58. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest
15 periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are
16 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees,
17 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

18 **FOURTH CAUSE OF ACTION**
19 **UNTIMELY PAYMENT OF WAGES**

20 **Labor Code §§ 204, 204b and 210**

21 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 60. Defendants willfully failed in their affirmative obligation to timely pay all wages and
23 premiums earned by Plaintiff and Class Members twice during each calendar month on days
24 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
25 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of
26 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
27 the applicable orders).

61. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code section 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
Labor Code § 226

62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

63. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code section 226(a).

64. As an initial matter, on information and belief, Plaintiff alleges that Defendants maintained a policy and practice of non-compliance with Labor Code section 226(a)'s statutory mandate by failing to issue or make available wage statements to Class Members each pay period that list any of the information required by Labor Code section 226.

65. Moreover, based on the wage statements that Plaintiff alleges Defendant only produced in response to her personnel file request, Plaintiff alleges that these wage statements fail to correctly list (1) gross wages earned *each pay period*, (2) total hours actually worked *each pay period*, (5) net wages earned, (6) inclusive dates of the pay period, (7) an employee ID number or the last four digits of the employee's SSN, (9) all hourly rates in effect and the total number of hours worked each pay period.

66. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in

1 a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest,
2 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section
3 226(e).

4 **SIXTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **Violation of Labor Code §§ 201 through 203**

7 67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 68. Defendants willfully failed in their affirmative obligation to pay all wages earned
9 and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination
10 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
11 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter
12 in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

13 69. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
14 wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class
15 are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a
16 waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs
17 to the extent permitted by law.

18 **SEVENTH CAUSE OF ACTION**

19 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

20 **Business and Professions Code §§ 17200, *et seq.***

21 70. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 71. Defendants willfully failed in their affirmative obligation to timely pay each payday
23 or at other required intervals all minimum, regular, and overtime wages, meal and rest period
24 premium wages, and reimbursements to Plaintiff and Class Members. These failures constitute
25 unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions
26 Code section 17200, *et seq.*

27 72. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
28 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of

1 all monies and property withheld, acquired, or converted by Defendants in violation of the Labor
2 Code and IWC Wage Orders under Business and Professions Code section 17202, 17203, 17204
3 and 17208.

4 73. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
5 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
6 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
7 which Plaintiff and the Class have an ownership interest and to prevent future damage under
8 Business and Professions Code section 17200, *et seq.* in addition to interest, attorneys' fees, and
9 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

10 **EIGHTH CAUSE OF ACTION**

11 **PAID SICK LEAVE VIOLATIONS (PAGA)**

12 **Labor Code §§ 246 *et seq.***

13 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 75. Defendants knowingly and intentionally failed in their affirmative obligation to
15 provide notice of and provide and pay paid sick leave to Plaintiff and the aggrieved employees in
16 violation of Labor Code sections 246 through 248.5.

17 76. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
18 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
19 entitles employees to use any accrued sick leave beginning on their 90th day of employment.

20 77. Labor Code section 246(l) governs how Defendants were required to calculate paid
21 sick leave:

22 [A]n employer shall calculate paid sick leave using any of the following calculations:

23 (1) Paid sick time for nonexempt employees shall be calculated in the same manner
24 as the regular rate of pay for the workweek in which the employee uses paid sick
25 time, whether or not the employee actually works overtime in that workweek.

26 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
27 employee's total wages, not including overtime premium pay, by the employee's
28 total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

78. Labor Code section 246(i) requires employers to provide employees with written notice every pay period “that sets forth the amount of paid sick leave available, or paid time off in lieu of sick leave.” The notice can either be on the employees’ wage statements or a separate written notice.

79. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these amounts in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS (PAGA)

Labor Code §§ 246 *et seq.*

80. Defendants knowingly and intentionally failed in their affirmative obligation to provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.1, and 248.2.

81. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20 2020 to November 14, 2021, but failed to do so. Pursuant to Labor Code sections 248.2, 248.6, and 248.7, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2022, but failed to do so.

82. Labor Code section 248.1, 248.2, and 248.6 incorporate the notice and record keeping provisions of sections 246(i) and 247.5. Labor Code section 246(i) requires employers to provide employees with written notice every pay period “that sets forth the amount of paid sick leave available, or paid time off in lieu of sick leave.” The notice can be either on the employees’ wage statements or a separate written notice. Labor Code section 247.5 also requires Defendants to

1 keep records of such leave or else there is a presumption that employees are “entitled to the
2 maximum hours accruable...unless [Defendants] can show otherwise by clear and convincing
3 evidence.”

4 83. Defendants have also failed to provide notice of this the Supplemental Sick Leave as
5 required by section 246.5. On information and belief, Defendants are alleged to have failed to
6 maintain paid sick leave records as required by Labor Code section 247.5.

7 84. Labor Code section 248.1 requires Covid-19 Supplemental Paid Sick Leave to be
8 paid at the *highest of* the following methods:

9 (1) the regular rate of pay for the workweek in which leave is taken

10 (2) state minimum wage; or

11 (3) local ordinance minimum wage

12 85. Labor Code section 248.2 requires Covid-19 Supplemental Paid Sick Leave to be
13 paid at the *highest of* the following methods:

14 (1) the regular rate of pay for the workweek in which leave is taken

15 (2) state minimum wage

16 (3) local ordinance minimum wage; or

17 (4) average hourly pay for preceding 90 days (excluding overtime pay).

18 86. Defendants failed to provide and pay paid sick leave in the manner described above.

19 87. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
20 aggrieved employees and the State of California for civil penalties as required by Labor Code
21 section 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
22 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
23 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
24 amounts in addition to interest, attorney’s fees and costs to the extent permitted by law.

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1 compensation for each workday that a fully compliant meal period was not provided, in violation of
2 Labor Code sections 226.7 and the IWC Wage Orders.

3 94. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **TWELFTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

9 **Labor Code §§ 226.7, 516, 1198**

10 95. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 96. Defendants willfully failed in their affirmative obligation to consistently authorize
12 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
13 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
14 Code sections 226.7, 516, 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
15 applicable orders).

16 97. Further, Defendants willfully failed in their affirmative obligation to consistently pay
17 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
18 compensation for each workday that a fully compliant rest period was not provided, in violation of
19 Labor Code sections 226.7 and the IWC Wage Orders.

20 98. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
21 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
22 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
23 to the extent permitted by law, including under Labor Code section 2699(g).

24 **THIRTEENTH CAUSE OF ACTION**

25 **UNTIMELY PAYMENT OF WAGES (PAGA)**

26 **Labor Code § 204, *et seq.***

27 99. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 100. Defendants willfully failed in their affirmative obligation to timely pay all wages and
2 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
3 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
4 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
5 violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages”
6 sections of the applicable orders).

7 101. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
8 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
9 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
10 to the extent permitted by law, including under Labor Code section 2699(g).

11 **FOURTEENTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF**
13 **EMPLOYMENT (PAGA)**

14 **Labor Code §§ 201 through 203**

15 102. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

16 103. Defendants willfully failed in their affirmative obligation to pay all wages earned
17 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
18 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
19 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
20 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
21 those due to Defendants’ failure to pay employees for all hours worked and for meal and rest period
22 premiums.

23 104. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
24 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
25 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
26 to the extent permitted by law, including under Labor Code section 2699(g).

1 **FIFTEENTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS (PAGA)**

3 **Labor Code § 226**

4 105. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 106. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
7 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
10 The civil penalties provided for in this section are in addition to any other penalty provided by law."

11 107. Defendants failed in their affirmative obligation provide accurate itemized wage
12 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because
13 Plaintiff and aggrieved employees were not paid for all premiums and hours worked at the proper
14 wage rates and the wage statements reflected inaccurate totals, including gross and net wages
15 earned, total hours worked, applicable rates in effect and corresponding number of hours worked.

16 108. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
17 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
18 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and
19 costs to the extent permitted by law, including under Labor Code section 2699(g).

20 **SIXTEENTH CAUSE OF ACTION**

21 **RECORDKEEPING VIOLATIONS (PAGA)**

22 **Labor Code § 1174**

23 109. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 110. Labor Code section 1174 provides: "Every person employing labor in this state shall:
25 ... (d) Keep, at a central location in the state or at the plants or establishments at which
26 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
27 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
28 employed at the respective plants or establishments. These records shall be kept in accordance with

1 rules established for this purpose by the commission, but in any case shall be kept on file for not
2 less than three years.”

3 111. Labor Code section 1174.5 provides: “Any person employing labor who willfully
4 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
5 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
6 hundred dollars (\$500).”

7 112. Defendants willfully failed in their affirmative obligation to maintain accurate
8 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
9 Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the
10 applicable orders).

11 113. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
12 aggrieved employees and the State of California for civil penalties as required by Labor Code
13 section 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
14 including under Labor Code section 2699(g).

15 **PRAYER FOR RELIEF**

16 Plaintiff prays for judgment as follows:

- 17 a. For certification of this action as a class action;
- 18 b. For appointment of Plaintiff as the representative of the Class;
- 19 c. For appointment of counsel for Plaintiff as Class Counsel;
- 20 d. For injunctive relief;
- 21 e. For compensatory damages in amount according to proof;
- 22 f. For all recoverable pre- and post-judgment interest;
- 23 g. For recovery of all statutory penalties and liquidated damages;
- 24 h. For disgorgement of all amounts wrongfully obtained;
- 25 i. For this action to be maintained as a representative action under the PAGA and for
26 Plaintiff and counsel to be provided with all enforcement capability as if the action
27 were brought by the State of California or the California Division of Labor
28 Enforcement;

- 1 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
2 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
3 permitted by law, including (without limitation) under California Labor Code
4 sections 218.5, 226, 1194, and Code of Civil Procedure section 1021.5;
5 l. For such other relief the Court deems just and proper.
6

7 Respectfully submitted,
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9 Dated: February 17, 2022

Ferraro Vega Employment Lawyers, Inc.

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12 _____
Nicholas J. Ferraro
Attorney for Plaintiff
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Exhibit A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

December 1, 2021

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA EMAIL & CERTIFIED U.S. MAIL
- *Electronic Return Receipt* -

Acumen Fiscal Agent, LLC
5416 E Baseline Rd, Suite 300
Mesa, Arizona 85206

Attn: Tara Katalinic, Compliance Analyst
tarak@acumen2.net

- *PAGA Notice & Filing Fee* -
Submitted electronically to the California
Labor and Workforce Development
Agency on **12/01/2021**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Lovelyn Tadena-Chua (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against ACUMEN FISCAL AGENT, LLC, and all related employer entities (“Defendant”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendant employs individuals like Claimant throughout the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Defendant engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined

below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendant legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendant and its agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant has been employed by Defendant since March 2020. Claimant currently works as a respite nurse. Throughout her employment, Claimant has been an hourly, non-exempt employee.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for **Acumen Fiscal Agent, LLC** in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendant’s violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Underpaid Overtime

Violation of Labor Code §§ 510, 558, 1454, 1194, 1197.1, 1198, 1199; IWC Wage Orders

Defendant failed to pay overtime wages at the lawful regular rate of pay to Claimant and other aggrieved employees in violation of Labor Code sections 510, 558, 1454, 1194, 1197.1, 1198, 1199, and the related sections of the applicable IWC Wage Orders, including sections 3 (Hours and Days of Work), the standing Minimum Wage Order, and IWC Wage Order 15.

Labor Code section 510 requires “[a]ny 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;” and “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;” and “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.” These requirements are further set forth in the IWC Wage Orders and enforced via Labor Code section 1198.

Labor Code section 1454 states that a “domestic work employee who is a personal attendant shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless the employee receives one and one-half times the employee’s regular rate of pay for all hours worked over nine hours in any workday and for all hours worked more than 45 hours in the workweek.”

Along with the penalties sections of the IWC Wage Orders, Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

During Claimant’s employment, Defendant failed to pay her overtime or double time, as applicable, for hours in excess of eight in a workday or 40 hours in a workweek. During Claimant’s employment, Defendant failed to pay her overtime for hours in excess of nine in a workday or 45 hours in a workweek. On information and belief, these violations apply to all other aggrieved employees whose wages were calculated and paid by Defendant, including those aggrieved employees subject to Labor Code section 1454. Even though Claimant’s time records reflect hours worked in excess of 8 hours and in excess of 12 hours in a single workday, Defendant paid Claimant for all excess hours at her straight time hourly rate, instead of one and one-half or two times her regular rate of pay. Defendant engaged in the same payroll practices with respect to other aggrieved employees who worked overtime hours during the PAGA Period, underpaying overtime wages by not paying the applicable 1.5x or 2.0x multiple.

Defendant has thus violated the foregoing sections of the Labor Code in each pay period in which aggrieved employees like Claimant worked overtime hours, but were not properly paid 1.5x or 2.0x their respective regular rate of pay for those overtime hours under California law. As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendant failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than

10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

During Claimant's employment, Defendant failed to pay her meal period premiums. Claimant's time records reflect start and end times with no meal periods, and her wage statements reflect an absence of meal period premium payments for those meal periods. On information and belief, these meal period violations apply to all other aggrieved employees whose wages were calculated and paid by Defendant. Defendant engaged in the same payroll practices of not providing meal periods when due with respect to other aggrieved employees who worked overtime hours during the PAGA Period. Defendant required Claimant and other aggrieved employees to waive or otherwise forego their meal periods contrary to the law.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Rest Period Premiums **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendant failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendant required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

For the same reasons as set forth above in the meal period section, and on information and belief, the aggrieved employees were underpaid rest period premiums, as a result of

Defendant's policy and practice of paying rest period premiums. Defendant maintains no policy advising employees of rest periods. Claimant and other aggrieved employees are required to remain on-duty, attending to patient care, but are not informed or authorized to take rest periods.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendant violated Labor Code section 246 because it failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3).

Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Labor Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Labor Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Labor Code § 246(b)(1). Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code section 246(l)(1)-(3).

However, Claimant and other aggrieved employees did not accrue paid sick days under Defendant's policy, nor did Defendant pay sick leave using any method whatsoever, as Claimant and the aggrieved employees were not provided with Paid Sick Leave under state or local law, nor were they informed of their right to paid sick leave. As a result of Defendant's policy and practice of not providing paid sick leave, Defendant wholly breached its obligations under Labor Code sections 246 *et seq.*, including by failing to provide notice of Paid Sick Leave under Labor Code section 247 and records under 247.5. Defendant further violated San Diego's Earned Sick Leave Laws and all other applicable local California ordinances.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code §§ 247 (\$100 per offense) and 248.5.

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Underpaid Covid Supplemental Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendant violated Labor Code section 248.1 and 248.2 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at the lawful hourly rate.

Under Labor Code section section 248.1, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2021. Under Labor Code section 248.2, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

Under Labor Code section 248.1, non-exempt employees must be paid supplemental paid sick leave according to the highest of the listed methods. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the listed methods.

On information and belief, Defendant simply failed to provide supplemental sick leave to Claimant and other aggrieved employees in any capacity, thus wholly breaching its obligations under the supplemental paid sick leave laws.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code § 248.5.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendant violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendant made or makes any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendant failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendant violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in

Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendant underpaid Claimant and other aggrieved employees’ overtime, premium pay, and sick leave pay. Defendant is separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

Defendant violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendant failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay overtime, Defendant failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendant violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—the overtime and premium underpayments—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned overtime, paid sick leave, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements.

Additionally, Defendant violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, in violation of Labor Code section 226(a)(9), the hourly rates in effect for overtime are incorrect for the same reasons, as they are inaccurately stated as the base rate (or other incorrect) for Claimant and other aggrieved employees who were paid for regular hours, whereas the applicable hourly rate in effect was in fact the overtime rate for overtime hours.

Lastly, the wage statements Defendant issued to Claimant and other aggrieved employees does not include the last four digits of the aggrieved employee’s respective SSN or, alternatively, other employer identification number, in violation of Labor Code section 226(a)(7).

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated. The wage statements

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’” (rejecting *Maldonado* defense for class claims)).

reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendant's failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendant violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendant is liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendant
to Change Policies and Practices

Claimant intends to pursue legal action against Defendant based on the violations set forth in this notice. Defendant is hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) her lawsuit was a catalyst in motivating Defendant to change its policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendant will be liable at trial, and (3) that Claimant has hereby notified Defendant of its violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity.

Defendant may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,



Nicholas J. Ferraro

Cc Claimant

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