

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Elida M. Espinoza (State Bar No. 314001)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 facsimile
lauren@ferrarovega.com / nick@ferrarovega.com

Attorneys for Plaintiff

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

SAMANTHA BURGOIN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CONCENTRA HEALTH SERVICES, INC.;
SELECT EMPLOYMENT SERVICES, INC.;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00024622-CU-OE-CTL

CLASS ACTION

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Failure to Pay PSL & Supp. PSL Wages
9. Unfair Competition
10. -18 Claims for Civil Penalties Under the
Private Attorneys General Act of 2004

1 Plaintiff SAMANTHA BURGOIN (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, and the State of California, brings this CLASS AND REPRESENTATIVE
3 ACTION COMPLAINT against Defendants CONCENTRA HEALTH SERVICES, INC.; SELECT
4 EMPLOYMENT SERVICES, INC.; and DOES 1 through 50 (collectively, “Defendants”), and on
5 information and belief alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure § 382 for
8 Defendants’ violations of the California Labor Code and Business and Professions Code.

9 2. Plaintiff further seeks civil penalties under the Private Attorneys General Act for
10 Defendants violations of the California Labor Code.

11 **JURISDICTION & VENUE**

12 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
13 California Constitution.

14 4. Venue as to each defendant is proper in this judicial district under Code of Civil
15 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
16 Plaintiff in this county, and committed some of the alleged violations in this county.

17 **PARTIES**

18 **A. Plaintiff Samantha Burgoin**

19 5. Plaintiff SAMANTHA BURGOIN is an individual over 18 years of age who worked
20 for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until
21 JANUARY 2022.

22 **B. Class Members**

23 6. Plaintiff brings this action as an individual and on behalf of the following class under
24 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
25 State of California as hourly non-exempt employees at any time from four years preceding the filing
26 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

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7. Further, Plaintiff proposes the following subclasses:

- a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were not paid all regular or minimum wages for all hours worked each pay period (including for off-the-clock work performed.)
- b. Unpaid Overtime Subclass: All Class Members who were paid overtime or doubletime wages in the same pay period in which they were also paid non-excludable forms of remuneration (including bonuses or other forms of compensation).
- c. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or more without a duty-free meal period of at least 30 minutes, or worked shifts of 10 hours or more without a second duty-free meal period of at least 30 minutes, and/or [2] who were not paid one hour of premium pay at the “regular rate of compensation” for each of those days.
- d. Rest Period Subclass: All Class Members who [1] were not authorized or permitted to take a 10-minute rest period for every four hours works or major faction thereof and/or [2] who were not paid one hour of premium pay at the “regular rate of compensation” for each of those days.
- e. Untimely Payment of Wages Subclass: All individuals who are members of the following classes: (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.
- f. Paid Sick Leave Subclass: All Class Members who were paid sick leave wages in the same pay period in which they were also paid non-excludable forms of remuneration (including bonuses or other forms of remuneration) and were paid sick leave at rate less than what is required by California law.

- 1 g. Wage Statement Subclass: All individuals who are members of the following
2 classes who received a wage statement from Defendants at any time during
3 the one-year period preceding the filing of this action through the present:
4 (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime
5 Subclass, and (iii) Meal Period Subclass, (iv) Rest Period Subclass, and
6 (v) Paid Sick Leave Subclass.
- 7 h. Waiting Time Class: All individuals who are members of the following
8 classes at any time during the three-year period preceding the filing of this
9 action through the present, excluding current employees who have never
10 previously separated from employment with Defendants: (i) Unpaid Minimum
11 or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal
12 Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.

13 **C. Defendants**

14 8. Defendant CONCENTRA HEALTH SERVICES, INC. corporation registered to do
15 business in the State of Nevada, doing business and employing labor throughout San Diego County.

16 9. Defendant SELECT EMPLOYMENT SERVICES, INC. is a corporation registered to
17 do business in the State of Delaware, doing business and employing labor throughout San Diego
18 County.

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

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

3 12. Plaintiff is informed, believes, and alleges that at least some of the defendants have
4 common ownership, common management, interrelationship of operations, and centralized control
5 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
6 responsible for the acts and omissions alleged herein.

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

11 14. Plaintiff is informed, believes and alleges that the above-mentioned defendants
12 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
13 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
14 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
15 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

16 **GENERAL ALLEGATIONS**

17 15. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
18 permitted to work, including off the clock work, resulting in unpaid minimum, regular, and overtime
19 wages.

20 16. Defendants required that Plaintiff and the Class Members work off-the-clock prior to
21 their start date by requiring that they access a “new hire link” to Defendants’ “onboarding system”
22 and review and complete various new hire paperwork. Defendants did not compensate Plaintiff and
23 Class Members for the time they spent reviewing and completing the new hire documents.

24 17. When Plaintiff and Class Members earned overtime, Defendants failed to pay the
25 overtime “at the rate of no less than one and one-half times the regular rate of pay for an employee” -
26 as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders - because
27 they failed to include Plaintiff’s and the Class Members’ additional compensation in their calculation
28 for the “regular rate of pay.”

1 18. Specifically, in addition to hourly wages, Defendants paid Plaintiff and the Class
2 Members bonuses and other forms of remuneration.

3 19. When Plaintiff and Class Members worked overtime, Defendants paid the overtime at
4 1.5x Plaintiff and Class Members' base hourly rate rather than at the regular rate of pay, which
5 would have factored in employees' additional remuneration.

6 20. Plaintiff's wage statement for the pay period of January 29, 2022 to February 11,
7 2022 shows that Plaintiff earned a \$250.00 "NonDiscretionary Bonus" and also worked overtime.
8 Yet, she was paid at a rate of \$27.75, which is 1.5x multiple of her \$18.50 base hourly rate.

9 21. Additionally, Defendants failed to consistently provide timely, off-duty 30-minute
10 meal periods to Class Members within the first five hours of work, and timely second off-duty 30-
11 minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code
12 sections 226.7, 512 and section 11 of the applicable IWC Wage Orders.

13 22. Plaintiff's, and on information and belief, the Class Members' time sheets establish
14 meal period liability on their face. Plaintiff and the Class Members usually worked shifts of more
15 than 10 hours in a workday and exceeding 12 hours in a workday but were not provided with a
16 second meal period. "[T]ime records showing noncompliant meal periods raise a rebuttable
17 presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN*
18 *Servs., LLC* (2021) 11 Cal. 5th 58, 61.

19 23. When Defendants did not provide fully compliant meal periods, Defendants failed to
20 pay Plaintiff and Class Members a meal period premium for every single non-compliant meal period
21 at the regular rate of compensation in violation of Labor Code section 226.7. *See Ferra v. Loews*
22 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 ("We hold that the terms are synonymous:
23 "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section
24 510(a), encompasses all nondiscretionary payments, not just hourly wages").

25 24. On the occasions when Defendants did pay a meal period premium to Plaintiff and
26 the Class Members, Defendants underpaid employees' meal period premium payments because they
27 failed to pay such premiums at the "regular rate of compensation," which would have factored in
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employees' bonuses and other forms of remuneration. Instead, Defendants paid premiums at employees base hourly rate of pay.

25. Plaintiff's wage statement for the pay period of November 6, 2021 through November 19, 2021 provides an illustrative example of these wage underpayments. During this pay period, Plaintiff received a non-discretionary bonus and was also paid a meal period "penalty." Rather than pay the penalty at the regular rate of compensation, Defendants paid the penalty at Plaintiff's base hourly rate of \$18.50.

26. Furthermore, Plaintiff and the Class Members were not allowed to take compliant or all of their rest periods because of staffing issues, employees' job responsibilities, work overload, and the steady flow of business. Thus, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order.

27. Defendants also had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

28. When Defendants did not provide a fully compliant rest periods to Plaintiff or other Class Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium, violation of Labor Code section 226.7.

29. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to Plaintiff and Class Members, which would have factored in employees' additional compensation that they received each pay period.

30. Additionally, Defendants provided Plaintiff with less paid sick leave than she was entitled to receive under Labor Code section 246 *et seq.* Defendants provided sick leave to employees using the accrual method. However, Defendants' provided Plaintiff with less than 1 hour for every 30 hours worked, in violation of Labor Code section 246 *et seq.*

31. For example, by the pay date of 09/03/2021, Plaintiff worked a total of 236.94 hours and should have accrued 7.89 hours of paid sick leave, but the wage statement for the pay period shows that Plaintiff had only accrued 7.0 hours.

1 32. Plaintiff is informed and believes that this sick leave accrual issue impacted other
2 aggrieved employees.

3 33. In pay periods where Defendants provided Plaintiff and other Class Members with
4 remuneration in addition to their respective base hourly rate for hours worked—excluding any forms
5 of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants failed to
6 properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor
7 Code § 246. Defendants instead paid sick leave at employees’ straight time hourly rate instead of
8 one of the methods authorized by statute, which required Defendants to factor in employees’
9 additional remuneration, such as bonuses.

10 34. Furthermore, on information and belief, Defendants also failed to pay Covid-19
11 Supplemental Sick Leave at a rate authorized by statute because when paying such leave,
12 Defendants failed to factor in employees’ bonuses and other compensation. On information and
13 belief, Defendants instead paid Supplemental Sick Leave at employees’ straight time hourly rate
14 rather than by one of the methods authorized by Labor Code sections 248.1, 248.2, and 248.6.

15 35. Defendants’ underpayment of sick leave resulted in wage underpayments to Plaintiff
16 and Class Members.

17 36. With respect to the unpaid minimum and regular wages, overtime wages, sick leave,
18 and meal and rest period premiums owed to Plaintiff and Class Members, Defendants failed to pay
19 those wages on time each pay period or upon separation of employment. *See Naranjo v. Spectrum*
20 *Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

21 37. Because Defendants did not pay Plaintiff and the Class for all wages/premiums and
22 sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
23 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
24 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

25 38. Defendants equally failed in their affirmative obligation to provide accurate itemized
26 wage statements each pay period to Plaintiff and Class Members.

27 39. Defendants issued wage statements to Plaintiff and, on information and belief, other
28 Class Members, which contain at least three distinct types of violations.

1 40. First, on each wage statement furnished, Defendants failed to accurately state the
2 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
3 Plaintiff and Class Members were not paid for off the clock work, earned overtime at one and one-
4 half times their regular rate of pay, but were underpaid overtime on an hourly basis (due to the
5 regular rate of pay underpayment), and were deprived of all sick leave wages and meal and rest
6 period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net
7 wages earned on those wage statements.

8 41. Second, Defendants violated Labor Code section 226(a)(2) by failing to list
9 employees’ “total hours worked,” as employees worked off-the-clock, rendering the total hours
10 listed as an inaccurate reflection of hours worked.

11 42. Third, in violation of Labor Code section 226(a)(9), the hourly rates and
12 corresponding hours worked at those rates are incorrectly listed on Plaintiff’s and Class Members’
13 wage statements. The hourly rates on the wage statement are inaccurate for overtime hours that
14 were not paid at the “regular rate of pay,” underpaid meal and rest period premiums, and underpaid
15 paid sick leave wages, as those hours were paid at the improper base hourly rate and reflected as
16 such on the wage statements of the employees.

17 43. Defendants’ wage statement issues described above rendered the wage statements
18 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
19 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
20 Members as the sole documentary evidence of their respective earnings.

21 44. Plaintiff and Class Members suffered injury in the form of confusion regarding
22 amounts paid for hours worked, and in the form of concealment of the common payroll practices
23 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
24 this Complaint.

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

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

7 47. Because of the violations set forth in this Complaint, including Defendants' failure to
8 accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay (i.e.,
9 unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC Wage
10 Orders by failing to maintain records showing accurate daily hours worked at the corresponding
11 wage rate, and the wages paid to each employee.

12 48. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
13 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
14 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
15 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
16 under California law.

17 **CLASS ALLEGATIONS**

18 49. *Numerosity.* The members of the Class are so numerous that joinder of all
19 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
20 inspection of employment and payroll records Defendants maintain and are required to maintain by
21 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes,
22 and alleges there are more than 40 Class Members.

23 50. *Adequacy of Representation.* Plaintiff is an adequate class representative. Plaintiff
24 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
25 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
26 resolving and litigating wage and hour class actions in California state and federal courts.

27 51. *Superiority.* A class action is superior to other means for adjudication of the claims
28 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow

1 for the common issues to be resolved in a single forum, simultaneously and without duplication of
2 effort and expense.

3 52. **Commonality.** Common questions of law and fact and a community of interest exists
4 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
5 Defendants and predominate over any individual issues.

6 53. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
7 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
8 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
9 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
10 on the causes of action alleged herein.

11 **PAGA ALLEGATIONS**

12 54. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on
13 behalf of the State of California and the "aggrieved employees," defined as follows:

14 All current and former non-exempt hourly employees who worked for Defendants in the
15 State of California during the period of April 19, 2021 through the current date and the date
16 of final judgment in this action ("PAGA Period").

17 55. The State of California, via the Labor and Workforce Development Agency
18 ("LWDA"), is the real party in interest in this action with respect to Plaintiff's claims under the
19 Private Attorney's General Act. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The
20 "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

21 56. "Notwithstanding any other provision of law, any provision of this code providing for
22 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any
23 of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this
24 code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee
25 on behalf of himself or herself and other current or former employees pursuant to the procedures
26 specified in Section 2699.3." (Labor Code § 2699(a)).

27 57. **On April 19, 2022**, Plaintiff gave written notice by online filing with the LWDA and
28 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").

1 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice,
2 incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL MINIMUM WAGES**

15 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

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

17 62. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass.

18 63. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
19 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
20 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
21 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
22 local and county minimum wage ordinances in effect.

23 64. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
24 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
25 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
26 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees,
27 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

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

4 66. This cause of action is brought by the Overtime Subclass pursuant to the IWC Wage
5 Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be
6 timely paid overtime wages all overtime hours worked, and which further provide a private right of
7 action for an employer's failure to pay all overtime compensation for overtime hours worked.

8 67. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
9 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
10 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
11 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
12 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
13 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
14 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

15 68. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
16 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
17 extent permitted by law.

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

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

21 70. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
22 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
23 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
24 provide a private right of action for an employer's failure to lawfully provide all meal periods and/or
25 pay meal period premiums at the lawful regular rate of compensation.

26 71. Defendants willfully failed in their affirmative obligation to consistently provide
27 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
28 before the fifth hour of hour for each work period of more than five hours per day and a second duty-

1 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
2 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal
3 Periods” sections of the applicable orders).

4 72. Further, Defendants willfully failed in their affirmative obligation to consistently pay
5 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
6 each workday that a fully compliant meal period was not provided, in violation of Labor Code
7 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
8 applicable orders).

9 73. Plaintiff and the Class are entitled to recover to the full amount of the meal period
10 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
11 the extent permitted by law.

12 **FOURTH CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

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

15 75. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
16 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized
17 to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a
18 private right of action for an employer’s failure to lawfully provide all rest periods and/or pay rest
19 period premiums at the lawful regular rate of compensation.

20 76. Defendants willfully failed in their affirmative obligation to consistently authorize
21 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
22 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
23 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
24 applicable orders).

25 77. Further, Defendants willfully failed in their affirmative obligation to consistently pay
26 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
27 each workday that a fully compliant rest period was not provided, in violation of Labor Code
28 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

78. Plaintiff and the Class are entitled to recover to the full amount of the rest period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

FAILURE TO PAY PAID SICK LEAVE & SUPP. PAID SICK LEAVE WAGES

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

80. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

81. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 et seq.

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

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

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

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's 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.

83. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their

1 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
2 Class.

3 84. Furthermore, Defendants knowingly and intentionally failed in their affirmative
4 obligation to pay Covid-19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the
5 correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

6 85. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
7 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
8 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
9 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
10 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
11 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
12 January 1, 2022 to September 30, 2022, and may be extended thereafter.

13 86. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
14 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
15 (2) state minimum wage, (3) local minimum wage.

16 87. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
17 paid sick leave according to the highest of the following four methods:

18 (I) Calculated in the same manner as the regular rate of pay for the workweek in
19 which the covered employee uses COVID-19 supplemental paid sick leave,
20 whether or not the employee actually works overtime in that workweek.

21 (II) Calculated by dividing the covered employee's total wages, not including
22 overtime premium pay, by the employee's total hours worked in the full pay
23 periods of the prior 90 days of employment.

24 (III) The state minimum wage.

25 (IV) The local minimum wage to which the covered employee is entitled.

26 88. Labor Code section 248.6 requires employers to pay supplemental sick leave using
27 either method (I) or (II), as identified above.
28

89. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by the Paid Sick Leave Class.

90. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

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

92. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

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

94. Plaintiff and the Class are entitled to recover 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 § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

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

1 96. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
2 Code § 226(a) which requires non-exempt employees be provided accurate itemized wage
3 statements each pay period, and which further provide a private right of action for an employer's
4 failure to comply with this obligation.

5 97. Defendants knowingly and intentionally failed in their affirmative obligation provide
6 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
7 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
8 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

9 98. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
10 itemized wage statements, causing confusion and concealing wage and premium underpayments.

11 99. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50
12 per employee for the initial pay period in which a violation occurred and \$100 per employee for each
13 violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition
14 to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code
15 section 226(e).

16 **EIGHTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

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

19 101. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
20 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
21 termination of employment, and which further provide a private right of action to recover statutory
22 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
23 of 30 days wages.

24 102. Defendants willfully failed and continue to fail in their affirmative obligation to pay
25 all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
26 termination of employment or within 72 hours thereafter for employees who did not provide at least
27 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
28 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

1 103. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
2 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
3 by law.

4 **NINTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

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

7 105. Plaintiff brings this cause of action on behalf of all Classes.

8 106. Defendants have engaged and continue to engage in unfair and/or unlawful business
9 practices in the State of California in violation of California Business and Professions Code § 17200
10 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

11 107. Defendants' dependance on these unfair and/or unlawful business practices deprived
12 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
13 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
14 Defendants over competitors who have been and/or are currently employing workers in compliance
15 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
16 business acts and practices in violation of Business and Professions Code section 17200, *et seq.*

17 108. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
18 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
19 restitution of the moneys as necessary and according to proof to restore all monies withheld,
20 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
21 17208.

22 109. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
23 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
24 interest and to prevent future damage and the public interest under Business and Professions Code
25 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
26 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

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1 **TENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES (PAGA)**

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

4 111. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
5 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
6 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
7 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
8 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
9 former employees pursuant to the procedures specified in Section 2699.3 .”

10 112. Labor Code section 2699(f) provides: “For all provisions of this code except those for
11 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
12 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
13 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
14 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
15 pay period for each subsequent violation.”

16 113. Labor Code § 204(a) states that all wages earned are due and payable twice during
17 each calendar month on days designated in advance by the employer as regular pay days. Overtime
18 wages are to be paid no later than the payday for the next regular payroll period. (Labor Code §
19 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee
20 as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and
21 \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

22 114. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
23 of an employer who violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
25 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
28

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages.”

3 115. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
5 the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage
6 Order further provides that “[e]very employer shall pay to each employee, on the established payday
7 for the period involved, not less than the applicable minimum wage for all hours worked in the
8 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

9 116. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
11 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
12 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
13 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
14 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
15 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent
16 violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid
17 employee for each pay period for which the employee is underpaid regardless of whether the initial
18 violation is intentionally committed.”

19 117. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
20 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
21 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
22 and “Minimum Wages” sections of the applicable orders).

23 118. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
24 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
25 Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and
26 costs to the extent permitted by law, including under Labor Code section 2699(g).

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1 **ELEVENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME (PAGA)**

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

4 120. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
5 employees no less than one and one-half times their respective “regular rate of pay” for all hours
6 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
7 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
8 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
9 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders and
10 the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

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

15 **TWELFTH CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

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

18 123. Defendants willfully failed in their affirmative obligation to consistently provide
19 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
20 beginning before the fifth hour of hour for each work period of more than five hours per day and a
21 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of
22 work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the “Meal
23 Periods” sections of the applicable orders).

24 124. Further, Defendants willfully failed in their affirmative obligation to consistently pay
25 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
26 compensation for each workday that a fully compliant meal period was not provided, in violation of
27 Labor Code sections 226.7 and the IWC Wage Orders.

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

5 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

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

21 **FOURTEENTH CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

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

24 131. Defendants willfully failed in their affirmative obligation to timely pay all wages and
25 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
26 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
27 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
28

violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

132. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

FIFTEENTH CAUSE OF ACTION

CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)

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

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

135. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees. Specifically, the wage statements issued to Plaintiff and the aggrieved employees did not accurately state each pay period all of the information required by Labor Code section 226(a)(1)-(9).

136. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

137. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 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).

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FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION (PAGA)

139. Defendants willfully failed in their affirmative obligation to pay all wages earned and to Plaintiff and aggrieved employees immediately upon termination of employment or within 30 days thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code Sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are those wages earned by the aggrieved employees as a result of Defendants' failure to pay employees for all hours worked and for meal and rest periods. ms.

SEVENTEENTH CAUSE OF ACTION

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

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

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

9 145. As discussed above, Defendants provided Plaintiff with less sick leave (under the
10 accrual method) than she was entitled to accrue based on her hours worked. Plaintiff is informed
11 and believes that this issue impacted other aggrieved employees as well.

12 146. Defendants also failed to pay Plaintiff and aggrieved employees paid sick leave
13 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
14 calculation the additional remuneration received by Plaintiff and the aggrieved employees, including
15 but not limited to, bonuses and other forms of remuneration. Defendants instead paid to Plaintiff and
16 the aggrieved employees' sick leave wages at their base hourly rate, resulting in wage
17 underpayments to Plaintiff and the aggrieved employees.

18 147. Moreover, on information and belief, Defendants knowingly and intentionally failed
19 in their affirmative obligation to provide notice of and provide Covid-19 Supplemental Sick Leave to
20 Plaintiff and the aggrieved employees, in violation of Labor Code sections 246, 247, 247.5, 248.2,
21 and 248.6.

22 148. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80
23 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
24 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
25 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
26 January 1, 2022 to September 30, 2022, and may be extended thereafter.

27 149. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
28 supplemental paid sick leave according to the highest of the following four methods: (1) the regular

rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or (4) the local minimum wage.

150. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick leave under either one of the following methods (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

151. To the extent Covid-19 Supplemental Sick Leave was provided, Plaintiff is informed and believes that Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate because Defendants failed to factor in employees' bonuses, and other forms of remuneration. Plaintiff is informed and believes that Defendants instead paid such sick leave at employees' base hourly rates rather than one of the methods authorized by statute.

152. 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 may also be entitled to penalties under Labor Code section 248.5.

EIGHTEENTH CAUSE OF ACTION

CIVIL PENALTIES RECORDKEEPING VIOLATIONS (PAGA)

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

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

155. Labor Code section 1174 provides: "Every person employing labor in this state shall: ... (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."

156. Labor Code section 1174.5 provides: “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 ..., shall be subject to a civil penalty of five hundred dollars (\$500).”

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

158. 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 1174.5, in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRA YER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the representative of the Class;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For recovery of damages in amount according to proof;
- e. For all recoverable pre- and post-judgment interest;
- f. For recovery of all civil and statutory penalties and liquidated damages;
- g. For disgorgement of all amounts wrongfully obtained;
- h. For this action to be maintained as a representative action under the PAGA and for Plaintiff and counsel to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- i. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- j. For restitution and injunctive relief;

- 1 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
3 1194, 2802, and Code of Civil Procedure section 1021.5; and
4 l. For such other relief the Court deems just and proper.

5 Dated: June 23, 2022

Ferraro Vega Employment Lawyers, Inc.

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8 Nicholas J. Ferraro
9 *Attorneys for Plaintiff*