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Assigned for All Purposes

Judge William Claster

CX-104

5 Attorneys for Plaintiff
FRANK RODRIGUEZ

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE, CIVIL COMPLEX CENTER**
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11 FRANK RODRIGUEZ, individually, and on
behalf of all aggrieved employees,

12 Plaintiffs,

13 v.

14 SUNSHINE BEHAVIORAL HEALTH LLC, a
15 California limited liability company, and DOES
1-25, inclusive,

16 Defendants.
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) Case No. 30-2022-01271946-CU-OE-CXC
)
) **COMPLAINT FOR DAMAGES FOR:**
) **1. FAILURE TO PAY ALL WAGES**
) **INCLUDING OVERTIME WAGES AND**
) **MINIMUM WAGE;**
) **2. FAILURE TO PROVIDE MEAL AND**
) **REST PERIODS;**
) **3. FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) **4. FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) **5. FAILURE TO PAY ALL WAGES DUE**
) **AND PAYABLE AT SEPARATION OF**
) **EMPLOYMENT;**
) **6. FAILURE TO PROVIDE ACCESS TO**
) **PERSONNEL AND PAYROLL**
) **RECORDS;**
) **7. UNFAIR BUSINESS PRACTICES; and**
) **8. CIVIL PENALTIES PURSUANT TO**
) **PAGA.**
)
) DEMAND FOR JURY TRIAL
)

24 COMES NOW Plaintiff FRANK RODRIGUEZ ("Plaintiff"), individually and on behalf of
25 all aggrieved employees, asserts claims against Defendants SUNSHINE BEHAVIORAL HEALTH
26 LLC, a California limited liability company, and DOES 1 through 25 inclusive, and hereby alleges
27 as follows:
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jointly, or severally.

6. Plaintiff is informed, believes, and thereon alleges that Defendants were his “Employer” as that term is defined in the applicable Wage Order of the Industrial Welfare Commission (“IWC”). Plaintiff is informed and believes and thereon alleges that, at all relevant times mentioned herein, Defendants were Plaintiff’s employer.

JOINT LIABILITY

7. Except as hereinafter specially described, Defendants, and each of them, are and were the agents and/or employees of the other Defendants, and in acting as described herein were acting within the scope of their authority or employment as agents and/or employees thereof, and with the permission and consent of the other Defendants.

8. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer, employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary, affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable for the conduct of them.

9. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above; that each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and agreement to do the things alleged herein.

GENERAL BACKGROUND FACTS

10. Plaintiff began his employment with Defendants in or around November 2020.

11. Plaintiff was a non-exempt Behavioral Health Technician at Defendants' Chapters Capistrano drug and rehabilitation facility located in San Clemente, CA.

12. Plaintiff earned \$16.00 per hour from the beginning of his employment until January 2021 and \$20.00 per hour from January 2021 until Defendants terminated his employment in or



1 around September 2021.

2 13. Neither at the time of Plaintiff's hire, nor any time thereafter, did Defendants
3 provide Plaintiff with a written notice communicating the following: the rate or rates of pay and
4 basis thereof; allowances, if any, claimed as part of the minimum wage; the regular payday
5 designated by the employer; the name of the employer, including "dba" names used; the physical
6 address of the employer's main office or principal place of business; the telephone number of the
7 employer; contact information of the employer's workers' compensation insurance carrier; that the
8 employee may accrue and use sick leave, among other things related; and any other information the
9 Labor Commissioner deems material and necessary.

10 14. Plaintiff is informed and believes that Defendants failed to provide and continue to
11 fail to provide the requisite notice to all other current and/or former non-exempt employees.

12 15. Throughout Plaintiff's employment with Defendants, Plaintiff was required to clock
13 in and out on a tablet device located at the facility.

14 16. At no point during Plaintiff's employment was he provided with the opportunity to
15 take meal and/or rest periods. Rather, Defendants significantly understaffed the facility with only
16 one (1) or two (2) staff members on duty to monitor and watch over a minimum of six (6) clients.
17 Defendants were well aware of this.

18 17. During shifts when Plaintiff was accompanied by another staff member, by no
19 means did that allow, permit, or give him the opportunity to take meal and/or rest periods. Rather,
20 Plaintiff was forced to take advantage of this time by completing the multitude of his other job
21 duties and was often tasked with picking up the catered meals, among other duties and
22 responsibilities.

23 18. Toward the end of Plaintiff's employment with Defendants, Plaintiff noticed that his
24 timecards indicated meal periods had been taken despite rarely taking compliant meal periods
25 throughout his employment. On or about September 9, 2021, immediately after noticing this and
26 believing it to be awfully suspect, Plaintiff contacted his former direct supervisor and Operational
27 Supervisor, Teresa Aragona ("Ms. Aragona"), and asked Ms. Aragona why he was being manually
28 clocked out for lunch at 12:00 PM and back in at 12:30 PM. Ms. Aragona attempted to brush off



1 Plaintiff's complaint stating that "[t]he clocking in and out is never consistent for all companies[]"

2 essentially implying that Defendants were doing so at each of its locations.

3 19. As Defendants' own records for Plaintiff indicate, Defendants provided Plaintiff

4 with a meal premium just one (1) time throughout his entire employment despite Defendants'

5 routinely failing to provide Plaintiff with compliant meal periods and manually clocking Plaintiff

6 out when no meal periods were able to be taken. Moreover, at no point throughout Plaintiff's

7 employment with Defendants did Defendants provide Plaintiff with a rest premium of one (1)

8 hours' worth of pay at Plaintiff's regular rate of pay in lieu of Defendants' failure to provide rest

9 periods to Plaintiff. In fact, Defendants wage statements for Plaintiff and presumably all other non-

10 exempt employees clearly indicate the Defendants do not provide rest period premiums to non-

11 exempt employees altogether.

12 20. Plaintiff is informed and believes that Defendants failed to provide and continue to

13 fail to provide compliant meal and rest periods, or premiums in lieu thereof, to all other non-

14 exempt hourly employees, at a minimum.

15 21. Plaintiff was required and expected to routinely use his personal cell phone for

16 work-related purposes every day throughout his employment with Defendants, whether on the

17 clock or off the clock. Defendants required Plaintiff to use his personal cell phone for constant

18 communication with upper management, nurses, psychologists, doctors, and other staff members

19 who needed to communicate on a team basis regarding client information, staff changes, day to day

20 operations and logistics, outside calls to third parties for facility maintenance, etc. Plaintiff is

21 informed and believes that Defendants and customers communicate with all other employees of

22 Defendants in a similar fashion through personal cell phones. At no point throughout Plaintiff's

23 employment with Defendants was he reimbursed for the personal cell phone expense incurred

24 despite Defendants' knowledge and expectation that Plaintiff constantly use his personal cell

25 phone. Defendants are therefore liable to Plaintiff and other aggrieved employees for unpaid

26 expense reimbursements and resulting off the clock time worked, among other things.

27 22. As a result of the above, Defendants failed to pay all wages including minimum and

28 overtime wages, failed to provide meal and/or rest periods or premiums in lieu thereof, failed to



1 maintain accurate records, and failed to provide accurate itemized wage statements for Plaintiff and
2 aggrieved employees showing proper gross and/or net wages earned, total hours worked, and/or all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each respective hourly rate.

5 23. Not only did Defendants fail to pay Plaintiff all wages due and payable at separation
6 of employment, but Defendants still have not paid all wages due and payable to Plaintiff.
7 Therefore, Plaintiff is entitled to the full thirty (30) days of waiting time penalties for Defendants'
8 failure to pay all wages due and payable at separation of employment.

9 24. Upon Plaintiff retaining our Firm, we prepared and sent a letter to Defendants and
10 Defendants' registered agent for service of process on December 22, 2021 titled "Representation,
11 Demand for Records; and Preservation of Evidence." This letter included a demand for Plaintiff's
12 personnel file, payroll records, and signed documents related to his employment. As of the date
13 this Complaint was filed, neither our Firm and/or Plaintiff has been provided with any of the
14 demanded records we are entitled to.

15 25. Upon information and belief, all current and/or former non-exempt employees of
16 Defendants, at a minimum, are aggrieved employees as defined under California Labor Code
17 section 2699(c).

18 26. Upon information and believe, all non-exempt employees were subject to similar
19 violations as Plaintiff including, but not limited to, failure to pay minimum wage, failure to pay
20 overtime wages, failure to provide meal and rest periods, failure to maintain accurate records,
21 failure to provide accurate itemized wage statements, and failure to pay all wages due and payable
22 at separation of employment.

23 27. Plaintiff brings this action both on an individual basis and pursuant to the Private
24 Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.* on behalf of the State
25 of California and on a representative basis on behalf of all California current and former employees
26 of Defendants.

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1 28. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency
2 (“LWDA”) on April 13, 2022. Therefore, Plaintiff has waited the mandatory sixty-five (65) days
3 since filing his PAGA Notice.

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY ALL WAGES INCLUDING**
6 **OVERTIME WAGES AND MINIMUM WAGE**
7 **IN VIOLATION OF LABOR CODE §§ 510, 1194, AND 1198**
8 **(Against All Defendants)**

9 29. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
10 set forth herein.

11 30. At all times mentioned herein, Defendants employed Plaintiff.

12 31. At all times mentioned herein, Plaintiff’s employment by Defendants was subject to
13 the provisions of the California Labor Code (“Labor Code”) and the applicable IWC Wage Order.

14 32. Labor Code section 510(a) and the applicable IWC Wage Order regulating payment
15 of wages in the state of California, provides that eight (8) hours of labor constitutes a day's work
16 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40)
17 hours in any one (1) workweek shall be compensated at the rate of no less than one and one-half
18 (1.5) times the regular rate of pay for each employee, and any work in excess of twelve (12) hours
19 in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
20 each employee [“double-time”], and at no less than one and one-half (1.5) for the first eight (8)
21 hours on the seventh (7th) consecutive day of work in a workweek.

22 33. Labor Code section 1194 states that any employee receiving less than the legal
23 minimum wage or the legal overtime compensation applicable to the employee is entitled to
24 recover the unpaid balance of the full amount of this minimum wage or overtime compensation,
25 including interest thereon, reasonable attorney's fees and costs of suit.

26 34. As explained above, Defendants routinely required and expected Plaintiff to work
27 while off the clock by including, but not limited to, manually clocking Plaintiff out for meal
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1 periods despite not providing compliant meal periods to Plaintiff and requiring Plaintiff use his
2 personal cell phone while off the clock.

3 35. As a result, Defendants failed to compensate Plaintiff for all hours worked and
4 rightfully owed.

5 36. As such, Plaintiff requests an award of all unpaid minimum wages, liquidated
6 damages, and an award of interest on all unpaid wages at the legal rate specified by Civil Code
7 section 3289(b), accruing from the date the wages were due and payable. Lab. Code § 218.6.

8 37. Pursuant to Labor Code section 1194(a), Plaintiff requests an award of interest,
9 reasonable attorneys' fees, and costs incurred in this action.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

12 **IN VIOLATION OF LABOR CODE §§ 226.7 AND 512**

13 **(Against All Defendants)**

14 38. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
15 set forth herein.

16 39. At all times mentioned herein, Defendants employed Plaintiff.

17 40. At all times mentioned herein, Plaintiffs employment by Defendants was subject to
18 the provisions of the Labor Code and the applicable IWC Wage Order.

19 41. Labor Code section 512 and the applicable IWC Wage Order states that an employer
20 may not employ an employee for a work period of more than five (5) hours per day without
21 providing the employee a meal period of not less than thirty (30) minutes, and an employer may not
22 employ an employee for a work period of more than ten (10) hours per day without providing the
23 employee with a second meal period of not less than thirty (30) minutes. The applicable IWC
24 Wage Order further states that unless the employee is relieved of all duty during a thirty (30)
25 minute meal period, the meal period shall be considered an "on duty" meal period and counted as
26 time worked. Labor Code section 226.7(a) states that no employer shall require any employee to
27 work during any meal or rest period mandated by an applicable order of the IWC.

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42. Throughout Plaintiff's employment with Defendants, Defendants failed to provide Plaintiff with uninterrupted and duty-free meal and rest periods.

43. Despite failing to provide uninterrupted and duty-free meal periods and rest periods, Plaintiff was provided with just one (1) meal premium of one (1) hours' worth of his wages in lieu of Defendants' meal and rest period violations.

44. Defendants' actions were fraudulent and deceitful, and were intentional acts designed to maximize their profits in complete disregard for Plaintiff's right to take meal and rest periods.

45. Pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of IWC Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. As such, Plaintiff is entitled to an additional one (1) hour of pay for each missed meal period per day for each workday in which Plaintiff was not provided a proper meal period under the above-described authorities.

46. The applicable IWC Wage Order states that every employer shall authorize and permit all employees to take rest periods. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours of work. As such, Plaintiff is entitled to an additional one (1) hour of pay for each day in which Plaintiff was not provided a proper rest period under the above-described authorities.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

IN VIOLATION OF LABOR CODE § 2802

(Against All Defendants)

47. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully set forth herein.

48. At all times mentioned herein, Defendants employed Plaintiff.

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1 49. At all times mentioned herein, Plaintiffs employment by Defendants was subject to
2 the provisions of the Labor Code and the applicable IWC Wage Order.

3 50. Plaintiff is informed, believes, and thereon alleges that during his employment, he
4 was required to pay necessary work-related expenses in the proper discharge of his employment
5 duties. Plaintiff further alleges that he was not reimbursed for those lawful and necessary work-
6 related expenses or losses incurred in direct discharge of his duties during his employment by
7 Defendants. Lab. Code § 2802(a) and Cal. Code of Regs. § 11040, *et seq.*

8 51. As explained above, Plaintiff was required and expected to use his personal cell
9 phone every day of his employment, whether during or outside of his work hours. At no point
10 throughout Plaintiff's employment did Defendants reimburse Plaintiff for his work-related use of
11 his personal cell phone despite Defendants' knowledge and expectation that Plaintiff use his
12 personal cell phone on a day-to-day basis during his employment.

13 52. Defendants' knowing and willful failure to reimburse lawful and necessary work-
14 related expenses and losses to Plaintiff resulted in damage to him because, to date, Defendants have
15 no reimbursed Plaintiff for those expenses he incurred.

16 53. Plaintiff is therefore entitled to lawful reimbursement for any and all necessary
17 work-related expenses, as provided in Labor Code section 2802(b), incurred during the direct
18 discharge of his duties while employment by Defendants as well as accrued interest on those
19 expenses that were not reimbursed from the date the expenses were incurred.

20 54. Plaintiff is entitled to attorneys' fees and costs of suit pursuant to section 2802(c) of
21 the Labor Code.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **IN VIOLATION OF LABOR CODE § 226**

25 **(Against All Defendants)**

26 55. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
27 set forth herein.

28 56. At all times mentioned herein, Defendants employed Plaintiff.



1 57. At all times mentioned herein, Plaintiff's employment by Defendants was subject to
2 the provisions of the Labor Code and the applicable IWC Wage Order.

3 58. Labor Code section 226 states that every employer shall, semimonthly or at the time
4 of each payment of wages, furnish each of its employees – either as a detachable part of the check,
5 draft, or voucher paying the employee's wages, or separately when wages are paid by personal
6 check or cash – an accurate itemized statement in writing showing (1) gross wages earned, (2) total
7 hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece
8 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
9 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
10 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and his or his social security number, (8) the name and address of the legal entity that is
12 the employer, and (9) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee. Section 226 also
14 provides that the deductions made from payments of wages shall be recorded in ink or other
15 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a
16 record of the deductions shall be kept on file by the employer for at least three years at the place of
17 employment or at a central location within the State of California.

18 59. During Plaintiff's employment with Defendants, Defendants failed to provide
19 Plaintiff with proper itemized wage statements in compliance with Labor Code section 226 in that
20 wage statements provided to Plaintiff did not list accurate information including, but not limited to,
21 the total hours Plaintiff worked, Plaintiff's accurate gross and/or net wages, and Plaintiff's correct
22 hourly rates for each hour worked.

23 60. Pursuant to Labor Code section 226(e), an employee suffering injury as a result of a
24 knowing an intentional failure by an employer to comply with the itemized wage statement
25 requirement is entitled to recover the greater of, all actual damages, or fifty dollars (\$50) for the
26 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
27 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
28 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.



1 61. Plaintiff requests an order of monetary damages and attorneys' fees and costs in
2 favor of Plaintiff and against Defendants, in accordance with the provisions of Labor Code section
3 226(e).

4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO PAY ALL WAGES DUE AND PAYABLE**
6 **AT SEPARATION OF EMPLOYMENT**
7 **IN VIOLATION OF LABOR CODE §§ 201 AND 203**

8 **(Against All Defendants)**

9 62. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
10 set forth herein.

11 63. At all times mentioned here, Defendants employed Plaintiff.

12 64. At all times mentioned herein, Plaintiff's employment by Defendants was subject to
13 the provisions of the Labor Code and the applicable IWC Wage Order.

14 65. Labor Code section 201 states that an employer is required to provide an employee
15 who is terminated all unpaid wages immediately upon termination. Labor Code section 203 states
16 that if an employer willfully fails to pay a discharged employee wages according to Labor Code
17 section 201, these wages shall continue as a penalty for up to a maximum of thirty (30) days.

18 66. As of the date of this Complaint, more than thirty (30) days have elapsed since the
19 termination of Plaintiff's employment with Defendants and Defendants still have not paid all of
20 Plaintiff's wages that were then due and owing at the time of his termination.

21 67. Defendants failed to pay the earned wages due and owing to Plaintiff upon his
22 separation of employment. Defendants still have not paid Plaintiff all earned wages, thereby
23 violating Labor Code section 201 and 203 and requiring Defendants to pay Plaintiff the maximum
24 statutory thirty (30) day waiting time penalty.

25 68. Pursuant to Labor Code section 203, Plaintiff is entitled to recover a penalty
26 equivalent to his daily rate of pay multiplied by thirty (30) days.

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SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCESS TO PERSONNEL AND PAYROLL RECORDS
IN VIOLATION OF LABOR CODE §§ 1198.5 and 226
(Against All Defendants)

69. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully set forth herein.

70. At all times mentioned herein, Defendants employed Plaintiff.

71. At all times herein mentioned, the employment of Plaintiff by Defendants was subject to the provisions of the California Labor Code and the applicable IWC Wage Order.

72. Labor Code section 1198.5(a) states that every current or former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

73. Labor Code section 1198.5(a) states that the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his representative, no later than thirty (30) calendar days from the date the employer receives a written request.

74. Labor Code section 226 states that every current or former employee, or his or her representative, has the right to inspect and receive a copy of the payroll records that the employer maintains relating to the employee's employment upon reasonable request to the employer.

75. Labor Code section 226(c) states that the employer shall make the contents of those payroll records available for inspection to the current or former employee, or his or her representative, not later than twenty-one (21) days from the date the employer receives the request.

76. On or about December 22, 2021, counsel for Plaintiff, at the request of Plaintiff, sent a letter to Defendants requesting Plaintiff's personnel file and payroll records. As Plaintiff's attorney of record, Plaintiff's counsel is entitled and permitted to seek these records at the request of the client.

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1 77. To date, Defendants have not produced Plaintiff's requested records in violation of
2 California law.

3 78. As a result of the statutory violations, pursuant to Labor Code section 1198.5,
4 subdivisions (b) and (k); and 226, subdivisions (e) and (f), Plaintiff seeks damages in an amount to
5 be determined according to proof at trial, costs, and reasonable attorneys' fees.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR BUSINESS PRACTICES**

8 **IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

9 **(Against All Defendants)**

10 79. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
11 set forth herein.

12 80. At all times mentioned herein, Defendants employed Plaintiff.

13 81. Defendants, and each of them, are "persons" as defined under Business &
14 Professions Code section 17021.

15 82. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful, and harmful to Plaintiff, other aggrieved employees, and to the general public. Plaintiff
17 seeks to enforce important rights affecting the public interest within the meaning of Code of Civil
18 Procedure section 1021.5.

19 83. Defendants' activities, as alleged herein, are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business & Professions
21 Code section 17200, *et seq.*

22 84. A violation of California Business & Professions Code section 17200, *et seq.*, may
23 be predicated on the violation of any state or federal law. All of the acts described herein as
24 violations of, among other things, the California Labor Code and IWC Wage Orders, are unlawful
25 and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent,
26 and unscrupulous, and thereby constitute unfair, unlawful, and/or fraudulent business practices in
27 violation of the California Business & Professions Code section 17200, *et seq.*

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1 **Failure to Pay Minimum Wage**

2 85. Defendants' failure to pay the legally required minimum wage in violation of the
3 Labor Code, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business
4 and Professions Code section 17200, *et seq.*

5 **Failure to Pay All Wages Including Overtime Wages**

6 86. Defendants' failure to pay legally required overtime wages in violation of the Labor
7 Code, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and
8 Professions Code section 17200, *et seq.*

9 **Failure to Provide Meal and Rest Periods**

10 87. Defendants' failure to provide legally required meal periods and rest periods in
11 violation of the Labor Code, as alleged above, constitutes unlawful and/or unfair activity prohibited
12 by Business and Professions Code section 17200, *et seq.*

13 **Failure to Provide Accurate Itemized Wage Statements**

14 88. Defendants' failure to provide legally required accurate itemized wage statements in
15 accordance with Labor Code section 226, as alleged above, constitutes unlawful and/or unfair
16 activity prohibited by Business and Professions Code section 17200, *et seq.*

17 **Failure to Pay All Wages Due and Payable Upon Separation of Employment**

18 89. Defendants' failure to timely pay legal required wages upon separation of
19 employment in accordance with Labor Code section 201, as alleged above, constitutes unlawful
20 and/or unfair activity prohibited by Business and Professions Code section 17200, *et seq.*

21 **Failure to Reimburse Business Expenses**

22 90. Defendants' failure to reimburse business expenses in accordance with Labor Code
23 sections 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business
24 and Professions Code section 17200, *et seq.*

25 **Failure to Provide Employment Records**

26 91. Defendants' failure to provide employment records in accordance with Labor Code
27 sections 1198.5; 432; and 226, as alleged above, constitutes unlawful and/or unfair activity
28 prohibited by Business and Professions Code section 17200, *et seq.*



1 92. By and through their unfair, unlawful, and/or fraudulent business practices described
2 herein, Defendants have obtained valuable property, money, and services from Plaintiff and have
3 deprived Plaintiff of his rights and benefits guaranteed by law, all to his detriment.

4 93. Plaintiff suffered monetary injury as a direct result of Defendants' wrongful
5 conduct.

6 94. Plaintiff is entitled to, and seeks, such relief as may be necessary to disgorge the
7 profits which Defendants have acquired, or of which Plaintiff has been deprived, by means of the
8 above-described unfair, unlawful, and/or fraudulent business practices. Plaintiff is not obligated to
9 establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

10 95. Plaintiff is further entitled to, and seeks, a declaration that the above-described
11 practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining the Defendants,
12 and each of them, from engaging in any of the above-described unfair, unlawful, and/or fraudulent
13 business practices in the future.

14 96. Plaintiff has no plain, speedy, and/or adequate remedy at law to redress the injuries
15 which he has suffered as a consequence of Defendants' unfair, unlawful, and/or fraudulent business
16 practices. As a result of the unfair, unlawful, and/or fraudulent business practices described above,
17 Plaintiff has suffered and will continue to suffer irreparable harm unless Defendants, and each of
18 them, are restrained from continuing to engage in said unfair, unlawful, and/or fraudulent business
19 practices.

20 97. Pursuant to California Business & Professions Code section 17200, *et seq.*, Plaintiff
21 is entitled to restitution of the wages withheld and retained by Defendants during a period that
22 commences four (4) years prior to the filing of this Complaint; a permanent injunction requiring
23 Defendants to pay all outstanding wages due to Plaintiff; an award of attorneys' fees pursuant to
24 California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of
25 costs.

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EIGHTH CAUSE OF ACTION
CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”)
IN VIOLATION OF LABOR CODE § 2698, ET SEQ.
(Against All Defendants)

98. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully set forth herein.

99. Labor Code sections 2698-2699.5, in relevant part, provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency. . . 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.”

100. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged to have been violation, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice.

101. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor Code section 2699.3. Plaintiff sent notice to Defendants and the LWDA on or about August 30, 2021, detailing Defendants’ alleged Labor Code violations. In particular, Plaintiff’s notice alleged violations of Labor Code sections 1182.12; 1194; 1197; 1197.1; 1198; 510; 201; 202; 226.7; 512; 1174; 1174.5; 1175; 226; 203; 1198.5; and 432.

102. LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

103. Plaintiff is an “aggrieved employee” under PAGA because he was employed by Defendants during the applicable statutory period and suffered one (1) or more of the Labor Code violations set forth in this Complaint.

104. Plaintiff seeks to recover, on his behalf, on behalf of the State, and on behalf of all former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus



1 reasonable attorney's fees and costs through a representative action permitted by PAGA and the
2 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.App.4th 969. Therefore, class
3 certification is not required.

4 105. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

5 A. Failure to pay minimum wage in violation of Labor Code section 1194;

6 B. Failure to pay all wages including overtime wages in violation of Labor Code
7 sections 510, 1194, and 1198;

8 C. Failure to timely pay wages in violation of Labor Code sections 201 and 202;

9 D. Failure to provide meal and rest periods in violation of Labor Code sections
10 226.7 and 512;

11 E. Failure to maintain accurate records in violation of Labor Code sections 1174,
12 1174.5, 1175, and 226(a);

13 F. Failure to provide accurate itemized wage statements in violation of Labor Code
14 section 226;

15 G. Failure to pay all wages due and payable upon separation of employment in
16 violation of Labor Code sections 203;

17 H. Failure to provide personnel file in violation of Labor Code section 1198.5;

18 I. Failure to provide signed documents relating to employment in violation of
19 Labor Code section 432; and

20 J. Failure to provide payroll records in violation of Labor Code section 226.

21 106. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars
22 (\$100.00) per pay period, per aggrieved employee for initial violations, and two hundred dollars
23 (\$200.00) per pay period, per aggrieved employee for subsequent violations for all Labor Code
24 provisions for which a civil penalty is not specifically provided.

25 107. As a proximate result of the action and conduct described in the paragraphs above,
26 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
27 employees have been damaged in an amount according to proof at the time of trial and seeks civil
28 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees,
3 judgment against Defendants, and each of them, as follows:

- 4 1. For economic damages according to proof;
5 2. For non-economic damages according to proof;
6 3. For penalties and premiums available under applicable law;
7 4. For an award of civil penalties pursuant to PAGA;
8 5. For declaratory and injunctive relief;
9 6. For liquidated damages;
10 7. For an award of reasonable attorney's fees and costs;
11 8. For pre-judgment and post-judgment interest as provided by law; and
12 9. For such other and further relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

15 Dated: July 25, 2022

KRING & CHUNG, LLP

16
17 By: _____

Tyler D. Krings
Attorneys for Plaintiff
FRANK RODRIGUEZ

