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County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

RAQUEL CARO SANTIAGO and STEVE
LOPEZ, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

SOUTHWEST KEY PROGRAM, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00021991-CU-OE-CTL

*Assigned to the Hon. Timothy Taylor
Department: C-72*

CLASS ACTION

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Failure to Pay PSL and Supp. PSL Wages
4. Unpaid Overtime Wages
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Unfair Competition
- 8-16. Claims for Civil Penalties under the Private
Attorneys General Act of 2004

Action Filed: June 8, 2022

1 Plaintiff RAQUEL CARO SANTIAGO and STEVE LOPEZ (“Plaintiffs”), as individuals and
2 on behalf of all others similarly situated current and former employees, and the State of California,
3 brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against
4 Defendant SOUTHWEST KEY PROGRAM, INC.; and DOES 1 through 50 (collectively,
5 “Defendants”), and on information and belief alleges as follows:

6 **INTRODUCTION**

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

10 2. Plaintiffs further seek civil penalties on behalf of themselves and other aggrieved
11 employees under the Private Attorneys General Act of 2004 for Defendants’ violations of the
12 California Labor Code.

13 **JURISDICTION & VENUE**

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

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

19 **PARTIES**

20 **A. Plaintiff Raquel Caro Santiago**

21 5. Plaintiff RAQUEL CARO SANTIAGO is an individual over 18 years of age who
22 worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until January
23 2022.

24 6. Plaintiff STEVE LOPEZ is an individual over 18 years of age who is currently
25 employed by Defendants as an hourly, non-exempt employee.

1 **B. Class Members**

2 7. Plaintiffs bring this action as individuals and on behalf of the following class under
3 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
4 State of California as hourly non-exempt employees at any time from four years preceding the filing
5 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

6 **C. Defendants**

7 8. Plaintiffs are informed, believe, and allege that Defendant SOUTHWEST KEY
8 PROGRAM, INC. is a corporation registered to do business in the State of California, doing business
9 and employing labor throughout San Diego County.

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

16 10. Plaintiffs are informed, believe, and allege that all defendants in this action are
17 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
18 defendant exercises control over the wages, hours, and working conditions of Plaintiffs and the other
19 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
20 creating a common law employment relationship.

21 11. Plaintiffs are informed, believe, and allege that at least some of the defendants have
22 common ownership, common management, interrelationship of operations, and centralized control
23 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
24 responsible for the acts and omissions alleged herein.

25 12. Plaintiffs are informed, believe, and allege that each defendant acted in all respects
26 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
27 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such
28 that the acts and omissions of each defendant may be legally attributable to all others.

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

GENERAL ALLEGATIONS

14. Defendants paid Plaintiffs and Class Members hazard pay premiums and other forms of compensation that they failed to include in their regular rate calculation for all regular rate of pay, including, overtime, meal and rest period premiums and paid sick leave, resulting in underpaid wages to Plaintiffs and Class Members.

15. When Defendants paid a meal or rest period premium to employees, they failed to pay such premiums at the “regular rate of compensation,” in violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”).

16. Plaintiffs and the Class Members were paid hazard pay premiums and other forms of remuneration. When Defendants paid premiums or overtime during the same pay periods when employees were paid additional forms of compensation, Defendant failed to pay such meal and rest period premiums at employees the “regular rate of pay/compensation,” which should have included the hazard pay premiums. Instead, Defendants paid such premiums at Plaintiffs and Class Members’ base hourly rate.

17. An illustrative example of this can be found in Plaintiff Caro's pay statement for the pay period from 08/09/2021 to 08/23/2021, during which Plaintiff Caro received a hazard pay premium for each hour worked, but was compensated for a meal period premium at her base hourly rate of \$23.67 instead of at the regular rate of compensation.

18. On information and belief, Defendants' practice of not paying all certain wages and premiums at the lawful rate (*i.e.*, including all forms of remuneration in the "regular rate of

pay/compensation”) is a matter of common corporate policy and payroll administration such that it applies and affected all other Class Members.

19. To the extent Defendant paid Covid-19 Supplemental Paid Sick Leave, Plaintiffs informed and believe that Defendant failed to pay the sick leave at a rate authorized by statute because they failed to factor in employees’ premium hazard pay and other forms of compensation.

20. On information and belief, Plaintiffs allege that Defendants instead paid Supplemental Sick Leave at employees’ base hourly rate rather than by one of the methods authorized by the Labor Code.

21. Additionally, Plaintiffs are informed and believe that Defendants failed to provide sick leave in the amount required by California law.

22. An example of Defendants’ violations can be seen by comparing Plaintiff Caro’s pay statements with the pay dates of 7/30/2021 and 8/13/2021. Plaintiff’s pay statement with the pay date of 7/30/2021, shows that she had 8.49 hours or accrued and unused sick leave

23. Plaintiff Caro's pay statement for the following period, dated 8/ 13/ 2021, shows that Plaintiff worked 82.17 hours, and thus should have accrued 2. 73 hours of paid sick leave for a total of 11.22 accrued and available paid sick leave hours for the pay period. During this pay period, Plaintiff did not use nor was she paid for any accrued sick leave. Nevertheless, her pay statement reveals that she had only 6.26 hours of accrued sick leave.

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

25. On information and belief, Plaintiffs allege that Defendants’ sick leave wage underpayments were a result of a common payroll practice that impacted all Class Members who used paid sick leave.

26. Defendants failed to provide all meal and rest periods to Class Members in compliance with the law.

27. Because Defendants failure to pay all wages, owed each pay period or upon separation of employment (or within 72 hours thereof), Defendants violated Labor Code sections 201 through

203 (waiting time) and 204 and 204b (paydays). *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.

28. Defendants equally failed in their affirmative obligation to provide accurate itemized wage statements each pay period to Plaintiffs and Class Members..

29. Defendants' wage statement violations rendered the wage statements inaccurate and confusing to Plaintiffs and Class Members, concealing the underpayments and presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiffs and Class Members as the sole documentary evidence of their respective earnings.

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

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

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

33. Plaintiffs are informed, believe, and allege that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiffs and the Class Members.

34. Plaintiffs are informed, believe, and allege that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent with their obligations under California law.

1 **CLASS ALLEGATIONS**

2 35. ***Numerosity.*** The members of the Class are so numerous that joinder of all individuals
3 would be impracticable. The identity of the Class Members is readily ascertainable by inspection of
4 employment and payroll records Defendants maintain and are required to maintain by under the
5 California Labor Code, IWC Wage Orders, and federal law. Plaintiffs are informed, believe, and allege
6 there are more than 40 Class Members.

7 36. ***Adequacy of Representation.*** Plaintiffs are adequate class representatives. Plaintiffs
8 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
9 Plaintiffs are represented by attorneys who have substantial experience prosecuting, defending,
10 resolving and litigating wage and hour class actions in California state and federal courts.

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

15 38. ***Commonality.*** Common questions of law and fact and a community of interest exist
16 amongst Plaintiffs and the Class. These common issues arise from the employment relationship with
17 Defendants and predominate over any individual issues.

18 39. ***Typicality.*** Plaintiffs' claims are typical of the claims of the other Class Members.
19 Plaintiffs and Class Members were subject to the same policies and practices of Defendants, which
20 resulted in losses to Plaintiffs and Class Members. Proof of common unlawful business practices,
21 which Plaintiffs experienced and are representative of, will establish the right of the Class to recover
22 on the causes of action alleged herein.

23 **PAGA ALLEGATIONS**

24 40. Plaintiffs seek to recover civil penalties as an individual aggrieved employee, on behalf
25 of the State of California and the "aggrieved employees," defined as follows:

26 All current and former non-exempt hourly employees who worked for Defendants in the State
27 of California during the period of May 31, 2021, through the current date and the date of final
28 judgment in this action ("PAGA Period").

1 41. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the Private
3 Attorney’s General Act. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government
4 entity on whose behalf the plaintiff files suit is always the real party in interest.”])).

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

11 43. **On May 31, 2022**, Plaintiff gave written notice by online filing with the LWDA and
12 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
14 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice,
15 incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

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

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

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

2 **MEAL PERIOD VIOLATIONS**

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

4 47. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

5 48. This cause of action is brought by Plaintiffs and the Class Members pursuant to the
6 IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
7 provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide
8 a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal
9 period premiums at the lawful regular rate of compensation.

10 49. As such, Defendants willfully failed in their affirmative obligation to consistently pay
11 Plaintiff and the Class Members one additional hour of pay at the respective regular rate of
12 compensation for each workday that a fully compliant meal period was not provided, in violation of
13 Labor Code sections 226.7, 512, 558, and 1198 and the 5-2001 IWC Wage Order section 11.

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

17 **SECOND CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 51. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

20 52. This cause of action is brought by Plaintiffs and the Class Members pursuant to the
21 IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be
22 authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further
23 provide a private right of action for an employer's failure to lawfully provide all rest periods and/or
24 pay rest period premiums at the lawful regular rate of compensation.

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

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

4 **THIRD CAUSE OF ACTION**

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

6 55. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

7 56. Plaintiff brings this cause of action on behalf of Plaintiffs and the Class Members.

8 57. Defendants knowingly and intentionally failed in their affirmative obligation to pay
9 paid sick leave and COVID-19 supplemental paid sick leave to Plaintiffs and the Class Members in
10 violation of Labor Code section 246 *et seq.*

11 58. Defendants failed to pay Plaintiffs and the Class Members their paid sick leave wages
12 at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave
13 calculation the additional remuneration received by Plaintiffs and the Class Members.

14 59. Furthermore, on information and belief, Defendants knowingly and intentionally failed
15 in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to Plaintiffs and the
16 Class Members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

17 60. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
18 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
19 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
20 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
21 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
22 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
23 to September 30, 2022, and may be extended thereafter.

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

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

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 63. All outside paragraphs of this Complaint are incorporated into this section.

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

8 65. 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 seventh
11 day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all
12 hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a
13 workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198
14 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

15 66. Plaintiff and Class Members are entitled to recover 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 **FIFTH CAUSE OF ACTION**

19 **UNTIMELY PAYMENT OF WAGES**

20 67. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

1 sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable
2 orders).

3 70. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in
4 addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
5 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
6 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
7 in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

8 **SIXTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 71. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

11 72. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
12 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
13 pay period, and which further provide a private right of action for an employer’s failure to comply
14 with this obligation.

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

19 74. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class Members of
20 accurate itemized wage statements, causing confusion and concealing wage and premium
21 underpayments.

22 75. As a result, Plaintiff and the Class Members are entitled to recover the statutory penalty
23 of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee
24 for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
25 addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor
26 Code section 226(e).

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 76. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

15 79. Plaintiff and the Waiting Time Penalty Subclass are entitled to recover to a waiting
16 time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent
17 permitted by law.

18 **EIGHTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 80. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

21 81. Plaintiff brings this cause of action on behalf of all Class Members.

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

25 83. Defendants' dependance on these unfair and/or unlawful business practices deprived
26 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
27 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
28 Defendants over competitors who have been and/or are currently employing workers in compliance

1 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
2 business acts and practices in violation of Business and Professions Code section 17200, *et seq.*

3 84. Plaintiffs are a victim of Defendants' unfair and/or unlawful conduct alleged in this
4 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
5 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
6 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

12 **NINTH CAUSE OF ACTION**

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

14 86. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

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

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1 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
2 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

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

7 **TWELFTH CAUSE OF ACTION**

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

9 1. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

20 **THIRTEENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

22 4. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

5 7. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved employees
6 of accurate itemized wage statements, causing confusion and concealing wage and premium
7 underpayments.

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

12 **FOURTEENTH CAUSE OF ACTION**

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

14 9. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

25 **FIFTEENTH CAUSE OF ACTION**

26 **CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)**

27 12. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.
28

1 13. Defendants knowingly and intentionally failed in their affirmative obligation to provide
2 and pay paid sick leave wages to Plaintiff and the aggrieved employees in violation of Labor Code
3 section 246.

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

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

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

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

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

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

18 16. As discussed above, Defendants provided Plaintiff with less sick leave (under the
19 accrual method) than she was entitled to accrue based on her hours worked. Plaintiffs are informed
20 and believe that this issue impacted other aggrieved employees as well.

21 17. Defendants also failed to pay Plaintiff and aggrieved employees paid sick leave wages
22 at one of the lawful rates set forth in the statute because Defendants failed to include in their calculation
23 the additional remuneration received by Plaintiff and the aggrieved employees. Defendants instead
24 paid Plaintiff and the aggrieved employees' sick leave wages at their base hourly rate, resulting in
25 wage underpayments to Plaintiff and the aggrieved employees.

26 18. Moreover, on information and belief, Defendants knowingly and intentionally failed in
27 their affirmative obligation to provide notice of and provide Covid-19 Supplemental Sick Leave to
28

1 Plaintiff and the aggrieved employees, in violation of Labor Code sections 246, 247, 247.5, 248.2, and
2 248.6.

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

8 20. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
9 supplemental paid sick leave according to the highest of the following four methods: (1) the regular
10 rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave,
11 (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum
12 wage, or (4) the local minimum wage.

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

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

21 23. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
22 aggrieved employees and the State of California for civil penalties as required by Labor Code section
23 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law,
24 including under Labor Code section 2699(g). Plaintiffs may also be entitled to penalties under Labor
25 Code section 248.5.

26 **SIXTEENTH CAUSE OF ACTION**

27 **RECORDKEEPING VIOLATIONS (PAGA)**

28 24. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

25. 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.”

26. 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).”

27. 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).

28. 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).

P R A Y E R

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiffs as the representatives of the Class;
- c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;
- d. For injunctive relief;
- e. For compensatory damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;

- 1 i. For this action to be maintained as a representative action under the PAGA and for
2 Plaintiffs and counsel to be provided with all enforcement capability as of the action
3 were brought by the State of California or the California Division of Labor
4 Enforcement;
5 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
6 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under California Labor Code
8 §§ 218.5, 226, 1194, and Code of Civil Procedure section 1021.5; and
9 l. For such other relief the Court deems just and proper.

10
11 Respectfully submitted,

12 Dated: June 2, 2023

Ferraro Vega Employment Lawyers, Inc.

14 

15 Nicholas J. Ferraro

16 Attorneys for Plaintiffs Caro Santiago and Lopez