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SUPERIOR COURT

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individually, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

DANIEL RIVERA GARCIA JR.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MEDMARK SERVICES, INC.;
MEDMARK TREATMENT CENTERS –
STOCKTON, INC.; and DOES 1 through
20, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-4196

*Assigned for All Purposes to:
Judge George J. Abdallah; Dept. 10A*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Permit Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized
Wage Statements;
6. Failure to Pay All Wages Due During
and Upon Separation of Employment;
7. Violation of Business and Professions
Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et
seq.* ("PAGA")



1 Plaintiffs Daniel Rivera Garcia Jr. and Ross Albaugh, individually and on behalf of
2 others similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Daniel Rivera Garcia Jr. and Ross Albaugh (“Plaintiffs”) bring this
5 putative class action and representative action pursuant to the Private Attorneys General Act of
6 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants Medmark Services, Inc., Medmark
7 Treatment Centers – Stockton, Inc., and DOES 1 through 20, inclusive (collectively,
8 “Defendants”), on Plaintiffs’ own behalf and on behalf of California citizens who are and were
9 employed by Defendants as non-exempt employees throughout California.

10 2. Defendants provide services or goods throughout California.

11 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
- 18 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (c) failing to authorize or permit lawful rest breaks;
- 20 (d) failing to provide accurate itemized wage statements;
- 21 (e) failing to pay wages timely during employment and upon termination.

22 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all
23 others similarly situated in California to recover, among other things, unpaid wages, benefits,
24 interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202,
25 203, 204, 210, 212, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
26 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

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7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

10. Plaintiffs are residents of California and worked for Defendants during the relevant time periods as alleged herein.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

1 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
3 all relevant times.

4 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
8 employer and/or joint employer of Plaintiffs and the class members.

9 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
12 the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
13 official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein. At
16 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiffs are informed and believe, and thereon allege, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

22 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on their own
23 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
24 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

25 19. All claims alleged herein arise under California law for which Plaintiffs seek
26 relief authorized by California law.

27 20. Plaintiffs' proposed class consists of and is defined as follows:

28 Class

1 All California citizens currently or formerly employed by Defendants as non-
2 exempt employees in the State of California at any time between November 26,
3 2017¹ and the date of class certification (“Class Period”).

4 21. Plaintiffs reserve the right to modify or re-define the Class, establish additional
5 subclasses, or modify or re-define any class or subclass definition as appropriate based on
6 investigation, discovery, and specific theories of liability.

7 22. Members of the Class described above will be collectively referred to as “Class
8 Members.”

9 23. There are common questions of law and fact as to the Class Members that
10 predominate over any questions affecting only individual members including, but not limited to,
11 the following:

- 12 (a) Whether Defendants failed to pay Plaintiffs and Class Members all wages
13 (including minimum wages and overtime wages) for all hours worked by
14 Plaintiffs and Class Members.
- 15 (b) Whether Defendants required Plaintiffs and Class Members to work over
16 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
17 (40) hours per week and failed to pay them proper overtime compensation
18 for all overtime hours worked.
- 19 (c) Whether Defendants deprived Plaintiffs and Class Members of timely
20 meal periods or required Plaintiff and Class Members to work through
21 meal periods without legal compensation.
- 22 (d) Whether Defendants deprived Plaintiffs and Class Members of rest breaks
23 or required Plaintiffs and Class Members to work through rest breaks.
- 24 (e) Whether Defendants failed to provide Plaintiffs and Class Members
25 accurate itemized wage statements.

26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (f) Whether Defendants failed to pay wages timely and at the proper rates to
2 Plaintiffs and Class Members;
- 3 (g) Whether Defendants' conduct was willful or reckless.
- 4 (h) Whether Defendants engaged in unfair business practices in violation of
5 Business and Professions Code §§ 17200, *et seq.*

6 24. There is a well-defined community of interest in this litigation and the proposed
7 Class and subclasses are readily ascertainable:

8 (a) Numerosity: The Class Members are so numerous that joinder of all
9 members is impractical. Although the members of the Class are unknown to Plaintiffs at this
10 time, on information and belief, the Class is estimated to be greater than fifty (50) individuals.
11 The identities of the Class Members are readily ascertainable by inspection of Defendants'
12 employment and payroll records.

13 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims
14 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
15 provisions of California's wage and hour laws entitled each Class Member to similar pay,
16 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
17 sustained by the Class Members, because they arise out of and are caused by Defendants'
18 common course of conduct as alleged herein.

19 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
20 interests of all Class Members because it is in the Plaintiffs' best interest to prosecute the claims
21 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed
22 class counsel, are competent and experienced in litigating large employment class actions and
23 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have
24 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
25 costs that have been and will be necessarily expended for the prosecution of this action for the
26 substantial benefit of the Class Members.

27 (d) Superiority: The nature of this action makes use of class action
28 adjudication superior to other methods. A class action will achieve economies of time, effort, and

1 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
2 same issues can be adjudicated in the same manner for the entire Class at the same time. If
3 appropriate, this Court can, and is empowered to, fashion methods to efficiently manage this case
4 as a class action.

5 (e) Public Policy Considerations: Employers in the State of California violate
6 employment and labor laws every day. Current employees are often afraid to assert their rights
7 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
8 because they believe their former employers might damage their future endeavors through
9 negative references and/or other means. Class actions provide class members who are not named
10 in the complaint with a type of anonymity that allows for the vindication of their rights while
11 affording them privacy protections.

12 GENERAL ALLEGATIONS

13 25. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
14 California residents as non-exempt employees throughout California at Defendants' California
15 business location(s).

16 26. Defendants continue to employ non-exempt employees within California.

17 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
19 were knowledgeable about California's wage and hour laws, employment and personnel
20 practices, and the requirements of California law.

21 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
23 worked (including minimum wages and overtime wages) and that they were not receiving all
24 wages earned for work that was required to be performed. In violation of the Labor Code and
25 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
26 wages and overtime wages) for all hours worked at the correct rate and within the correct time.

27 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiff and Class Members were entitled to receive all required meal

1 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
2 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
3 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal
4 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
5 rate of pay when they did not receive a timely, uninterrupted meal period.

6 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
8 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
9 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
10 Orders, Plaintiffs and Class Members did not receive all rest breaks or payment of one (1)
11 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
12 was missed, late, or interrupted.

13 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
15 statements that accurately showed the following information pursuant to the Labor Code: (1)
16 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
17 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
18 deductions, provided that all deductions made on written orders of the employee may be
19 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
20 which the employee is paid; (7) the name of the employee and only the last four digits of his or
21 her social security number or an employee identification number other than a social security
22 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
25 were not provided with accurate itemized wage statements.

26 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
28

1 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
2 failed to do so in order to increase Defendants' profits.

3 33. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
4 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,
5 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
6 period premiums, unpaid rest period premium payments, waiting-time penalties, interest,
7 attorneys' fees, penalties, costs, and expenses.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

11 34. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
12 though fully set forth herein.

13 35. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
14 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
15 wage than the minimum so fixed is unlawful.

16 36. Plaintiffs and Class Members were employees entitled to the protections of Labor
17 Code §§ 1194 and 1197.

18 37. During the relevant time period, Defendants failed to pay Plaintiffs and Class
19 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

20 38. During the relevant time period, Defendants failed to pay at least minimum wage
21 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.
22 Defendants failed to include non-discretionary bonuses in the regular rate of pay when
23 calculating sick pay.

24 39. Defendants' failure to pay Plaintiffs and Class Members the required minimum
25 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class
26 Members are entitled to recover the unpaid balance of their minimum wage compensation as
27 well as interest, costs, and attorneys' fees.

1 40. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
2 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
3 interest thereon.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

7 41. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 42. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
10 unlawful to employ persons without compensating them at a rate of pay either one and one-half
11 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
12 worked by the person on a daily or weekly basis.

13 43. Specifically, the applicable IWC Wage Orders provide that Defendants are and
14 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
15 and one-half times (1½) their regular rate of pay when working and for all hours worked in
16 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
17 eight (8) hours of work on the seventh day of work in a workweek.

18 44. The applicable IWC Wage Orders further provide that Defendants are and were
19 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
20 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
21 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

22 45. California Labor Code § 510 codifies the right to overtime compensation at one
23 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
24 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
25 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
26 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
27 seventh day of work in a workweek.

46. Labor Code § 510 and the applicable IWC Wage Orders provide that employment of more than six days in a workweek is only permissible if the employer pays proper overtime compensation as set forth herein.

47. Plaintiffs and Class Members were employees entitled to the protections of California Labor Code §§ 510 and 1194.

48. During the relevant time period, Defendants required Plaintiffs and Class Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh consecutive day of work, entitling them to overtime wages.

49. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members overtime wages for all overtime hours worked. To the extent these hours qualify for the payment of overtime wages, Plaintiffs and Class Members were not paid proper overtime wages. Defendants failed to include non-discretionary bonuses in the regular rate of pay when calculating overtime wages.

50. In violation of California law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiffs and Class Members for all wages earned and all hours worked.

51. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

52. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS (Violation of Labor Code §§ 226.7 and 512;

Violation of IWC Wage Order § 11)

53. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

1 54. Labor Code § 226.7 provides that no employer shall require an employee to work
2 during any meal period mandated by the IWC Wage Orders. 58. Section 11 of the applicable IWC
3 Wage Order states, “[n]o employer shall employ any person for a work period of more than five
4 (5) hours without a meal period of not less than 30 minutes, except that when a work period of
5 not more than six (6) hours will complete the day’s work the meal period may be waived by
6 mutual consent of the employer and the employee.”

7 55. Labor Code § 512(a) provides that an employer may not require, cause, or permit
8 an employee to work for a period of more than five (5) hours per day without providing the
9 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
10 total work period per day of the employee is not more than six (6) hours, the meal period may be
11 waived by mutual consent of both the employer and the employee.

12 56. Labor Code § 512(a) also provides that an employer may not employ an
13 employee for a work period of more than ten (10) hours per day without providing the employee
14 with a second meal period of not less than thirty (30) minutes, except that if the total hours
15 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
16 consent of the employer and the employee only if the first meal period was not waived. 61.
17 During the relevant time period, Plaintiff and Class Members did not receive compliant meal
18 periods for working more than five (5) and ten (10) hours per day because their meal periods were
19 missed, late, short, interrupted, and/or they were not permitted to take a second meal period. 62.
20 Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to
21 pay an employee one (1) additional hour of pay at the employee’s regular rate of compensation
22 for each work day that a compliant meal period is not provided.

23 57. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
24 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
25 and section 11 of the applicable IWC Wage Order. Defendants failed to include non-discretionary
26 bonuses in the regular rate of pay when calculating meal period premiums.

1 58. As a result of Defendants' failure to pay Plaintiffs and Class Members an
2 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
3 Class Members suffered and continue to suffer a loss of wages and compensation.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PERMIT REST BREAKS**

6 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

7 59. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 60. Labor Code § 226.7(a) provides that no employer shall require an employee to
10 work during any rest period mandated by the IWC Wage Orders.

11 61. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
13 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
14 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
15 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

16 62. During the relevant time period, Plaintiffs and Class Members did not receive a
17 ten (10) minute rest period for every four (4) hours or major fraction thereof worked, including
18 working in excess of ten (10) hours in a day, because they were required to work through their
19 rest periods and/or were not authorized to take their rest periods.

20 63. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
21 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
22 compensation for each work day that a compliant rest period is not provided.

23 64. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
24 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
25 226.7(b) and section 12 of the applicable IWC Wage Order.

26 65. As a result of Defendants' failure to pay Plaintiffs and Class Members an
27 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
28 Members suffered and continue to suffer a loss of wages and compensation.

1 **FIFTH CAUSE OF ACTION**

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

3 (Violation of Labor Code § 226; Violation of IWC Wage Order)

4 66. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 67. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including, the following:
8 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
9 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
10 deductions, provided that all deductions made on written orders of the employee may be
11 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
12 which the employee is paid, (7) the name of the employee and the last four digits of his or her
13 social security number or an employee identification number other than a social security number,
14 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee.

17 68. During the relevant time period, Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
19 and Class Members. The deficiencies include, among other things, the failure to correctly state
20 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
21 number of hours worked at each hourly rate by Plaintiffs and Class Members, as well as the
22 failure to list the full and complete name and address of the legal entity that is the employer.

23 69. As a result of Defendants' knowing and intentional failure to comply with Labor
24 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their
25 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
26 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
27 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
28 their protected interest in receiving, accurate itemized wage statements under Labor Code

1 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
2 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
3 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to
4 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to
5 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
6 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.
7 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
8 Defendants.

9 70. Plaintiffs and Class Members are entitled to recover from Defendants the greater
10 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
11 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
12 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
13 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

14 71. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
15 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
16 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
17 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
18 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
19 to proof at trial.

20 SIXTH CAUSE OF ACTION

21 **FAILURE TO PAY TIMELY DURING EMPLOYMENT AND UPON TERMINATION**

22 (Violation of Labor Code §§ 201-204, 210)

23 72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 73. Pursuant to California Labor Code § 204, employees must be paid within a certain
26 number of days of the close of the pay period.

27 74. During the relevant time period, Defendants failed to timely pay Plaintiffs and
28 Class Members wages earned during the pay period and upon termination or resignation.

1 75. Such a pattern, practice and uniform administration of corporate policy regarding
2 timely payment of wages as described herein is unlawful and creates an entitlement to recovery
3 by Plaintiffs in a civil action, for the unpaid balance of the full amount of damages owed,
4 including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of
5 California Labor Code § 210, as well as penalties pursuant to Labor Code § 203.

6 76. As a direct and proximate cause of these violations, Class Members have been
7 damaged, in an amount to be determined at trial.

8 **SEVENTH CAUSE OF ACTION**

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

10 (Violation of Business and Professions Code §§ 17200, *et seq.*)

11 77. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 78. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
14 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .
15 . .”

16 79. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
17 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
18 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
19 suffer injuries-in-fact.

20 80. Defendants’ policies and practices violated state law in at least the following
21 respects:

22 (a) Failing to pay all wages earned (including minimum wage and overtime
23 wages) to Plaintiffs and Class Members at the proper rate and in a timely
24 manner in violation of Labor Code §§ 201, 202, 204, 510, 1194, 1194.2,
25 1197, 1198.

26 (b) Failing to provide compliant meal periods without paying Plaintiff and
27 Class Members premium wages for every day said meal periods were not
28 provided in violation of Labor Code §§ 226.7 and 512.

1 (c) Failing to authorize or permit compliant rest breaks without paying
2 Plaintiffs and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code §
4 226.7.

5 (d) Failing to provide Plaintiffs and Class Members with accurate itemized
6 wage statements in violation of Labor Code § 226.

7 81. As alleged herein, Defendants systematically engaged in unlawful conduct in
8 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
9 (minimum and overtime wages), failing to provide meal periods and rest breaks or
10 compensation in lieu thereof, and failing to furnish accurate wage statements, all in order to
11 decrease their costs of doing business and increase their profits.

12 82. At all relevant times herein, Defendants held themselves out to Plaintiffs and
13 Class Members as being knowledgeable concerning the labor and employment laws of
14 California.

15 83. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
16 and Class Members wages and monies, thereby creating for Defendants an artificially lower
17 cost of doing business in order to undercut their competitors and establish and/or gain a greater
18 foothold in the marketplace.

19 84. By violating the foregoing statutes and regulations as herein alleged, Defendants'
20 acts constitute unfair and unlawful business practices under California Business and Professions
21 Code §§ 17200, *et seq.*

22 85. As a result of the unfair and unlawful business practices of Defendants as alleged
23 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
24 restitution in an amount to be shown according to proof at trial.

25 86. Plaintiffs seeks to enforce important rights affecting the public interest within the
26 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
27 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members,
28 and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class

Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")

87. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

88. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor 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 Labor Code § 2699.3.

89. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

90. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194, 1194.2, 1197, and 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiffs and other aggrieved employees during employment and upon separation of employment; failure to include non-discretionary bonuses in the regular rate of pay when overtime wages and sick pay; as herein alleged;
- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees; failure to pay premium wages for missed meal periods; failure to include non-

1 discretionary bonuses in the regular rate of pay when calculating meal
2 period premiums; as herein alleged;

3 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
4 Plaintiffs and other aggrieved employees and failure to pay premium
5 wages for missed rest periods as herein alleged;

6 d. violation of Labor Code § 226 for failure to provide accurate itemized
7 wage statements to Plaintiffs and other aggrieved employees as herein
8 alleged;

9 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
10 accurate and complete records showing, among other things, the hours
11 worked daily by and the wages paid to aggrieved employees; and

12 91. Plaintiffs are “aggrieved employees” because they were employed by the alleged
13 violator and had one or more of the violations committed against them, and therefore are
14 properly suited to represent the interests of all other aggrieved employees.

15 92. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
16 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and
17 all other aggrieved employees under PAGA.

18 93. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
19 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
20 cited above.

21 94. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
22 herein.

23 **PRAYER FOR RELIEF**

24 On Plaintiffs’ own behalf and on behalf of all others similarly situated, Plaintiffs pray
25 for relief and judgment against Defendants, jointly and severally, as follows:

26 1. For certification under California Code of Civil Procedure § 382 of the proposed
27 Class and any other appropriate subclass;
28

2. For appointment of Daniel Rivera Garcia Jr. and Ross Albaugh as class representatives;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and

For such other relief as the Court deems just and proper.

Dated: September 13, 2023

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell

Attorneys for Plaintiffs Daniel Rivera Garcia Jr.
and Ross Albaugh

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On October 24, 2023, I served the foregoing document entitled:

FIRST AMENDED CLASS ACTION COMPLAINT

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

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Boston, Massachusetts 02210
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JRockers@goodwinlaw.com

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Attorneys for Defendants:

MEDMARK SERVICES, INC.; MEDMARK TREATMENT CENTERS – STOCKTON, INC.

☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

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☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on October 24, 2023, at Irvine, California.

4 

5 _____
6 Jacquelyn Enciso
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