

SUMMONS ISSUED

Justin Lo, Esq. (SBN: 280102)

justin@caworklawyer.com

May T. To, Esq. (SBN 305268)

may@caworklawyer.com

WORK LAWYERS PC

22939 Hawthorne Blvd., Suite 300

Torrance, CA 90505

Tel: (424) 355-8535

Fax: (424) 355-8335

Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

Attorneys for Plaintiff ANGELO Q. DEL ROSARIO, as representative of the State of California
and the Labor and Workforce Development Agency, and on behalf of himself and Aggrieved
Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

ANGELO Q. DEL ROSARIO, on behalf of
himself and all other Aggrieved Employees,

Plaintiff,

v.

TOTAL RENAL CARE, INC., a California
corporation; DAVITA INC., a Delaware
corporation; and DOES 1- 50, Inclusive,

Defendants,

Case No. C25-01097

COMPLAINT

1. Civil Penalties under the Private Attorneys
General Act (PAGA)

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1 Plaintiff, ANGELO Q. DEL ROSARIO, (“Plaintiff”), as a representative of the State of
2 California and the Labor and Workforce Development Agency (LWDA), and on behalf of himself
3 and other current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of himself and other Aggrieved Employees, to collect
7 civil penalties for Defendants’ Labor Code violations.

8 2. Defendants and employers, TOTAL RENAL CARE, INC. and DAVITA INC.
9 (collectively “Defendants”), violated numerous wage and hour laws with respect to Plaintiff and
10 other Aggrieved Employees by failing to provide, for example: accurate and itemized wages
11 statements, payment for all hours worked (including regular wages and overtime), failure to
12 provide a minimum wage, lawful meal periods, lawful rest periods, timely payment during
13 employment, failure to reimburse for expenses incurred during the course and scope of
14 employment, and payment upon separation of employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff, ANGELO Q. DEL ROSARIO (hereinafter, “Plaintiff”) is, and at all
18 times herein mentioned was, a resident of California, residing in Contra Costa County.

19 4. Aggrieved Employees are all former and/or current non-exempt employees
20 holding various positions and employed by Defendants within California during the relevant time
21 period who were subject to at least one or more of Labor Code violations set forth in the PAGA
22 Notice filed with the LWDA dated January 22, 2025 (“Aggrieved Employees”).

23 **The Defendants**

24 5. Defendant TOTAL RENAL CARE, INC. (hereinafter, “TOTAL RENAL
25 CARE”), is a California corporation doing business in California, and at all relevant times
26 mentioned herein, existing, doing business and employing individuals in the County of Contra
27 Costa, State of California. Plaintiff is informed and believes that TOTAL RENAL CARE operates
28 at least one location in Contra Costa County located at 4040 Lone Tree Way Antioch, CA 94531.

1 6. Defendant DAVITA INC. (hereinafter, "DAVITA"), is a Delaware corporation
2 doing business in California which, at all relevant times mentioned herein, existing, doing
3 business and employing individuals in the County of Contra Costa, State of California. Plaintiff
4 is informed and believes that DAVITA operates at least one location in Contra Costa County
5 located at 4040 Lone Tree Way Antioch, CA 94531.

6 7. TOTAL RENAL CARE and DAVITA are collectively referred to herein as
7 "Defendants."

8 8. Plaintiff is informed and thereon alleges that Defendants exercised control over
9 Plaintiff and Aggrieved Employees' wages, hours, and/or working conditions.

10 9. The true names and capacities, whether individual, corporate, associate, or
11 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
12 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
13 amend this Complaint to insert the true names and capacities of said Defendants when the same
14 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
15 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
16 therefore liable to Plaintiff as alleged hereinafter.

17 10. Plaintiff is informed and believes, and based thereupon alleges, that at all times
18 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
19 supervisors, conspirators, parent corporation, joint employers, successors, alter ego, and/or joint
20 ventures of the other Defendants, and each of them, and in doing the things alleged herein, were
21 acting at least in part within the course and scope of said agency, employment, conspiracy, joint
22 employment, alter ego status, and/or joint venture and with the permission and consent of each of
23 the other Defendants.

24 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
25 and each of them, including those Defendants named DOES 1-50, acted in concert with one
26 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
27 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
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1 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
2 each of them, including those Defendants named as DOES 1-50, formed and executed a
3 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
4 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
5 to and actually causing Plaintiff harm.

6 12. Whenever and wherever reference is made in this Complaint to any act or failure
7 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
8 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
9

10 **JURISDICTION AND VENUE**

11 13. Venue is proper in Contra Costa County because Defendants either maintain its
12 locations and/or transacts business in this county, the obligations and liability primarily arise in
13 this county, and work was primarily performed by Plaintiff and other Aggrieved Employees in
14 this county.

15 14. The California Superior Court has jurisdiction over this matter. PAGA penalties
16 cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal.
17 Further, there is no federal question at issue as the issues herein are based solely on California
18 statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare
19 Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

20 **GENERAL ALLEGATIONS**

21 15. Defendants are kidney dialysis providers. Defendants employed Plaintiff and
22 Aggrieved Employees in California during the relevant PAGA period. Aggrieved Employees are
23 all former and/or current non-exempt employees holding various positions and employed by
24 Defendants within California during the relevant time period who were subject to at least one or
25 more Labor Code violations set forth in this Complaint and the PAGA Notice dated January 22,
26 2025.

27 16. Plaintiff was employed by Defendants as a dialysis technician from approximately
28 October 2021 to about September 4, 2024. Plaintiff's primary job duties were taking care of

1 patients including checking their vital signs and assisting the supervisor.

2 17. The position required Plaintiff to work more than 8 hours a day and/or 40 hours
3 per week without lawful compensation. Plaintiff and Aggrieved Employees were regularly not
4 paid for minimum wage or overtime pay for all compensable time worked, including off-the-
5 clock work.

6 18. Plaintiff and Aggrieved Employees were also not paid their correct overtime
7 wages at their correct regular rate of pay because Defendants failed to factor non-discretionary
8 bonuses and compensation, such as “Float Diff,” and “LumpSumDiff” into Plaintiff and
9 Aggrieved Employees’ regular rate of pay for purposes of calculating overtime.

10 19. Plaintiff and Aggrieved Employees were subject to not having all of their
11 compensable work time recorded. Not all of Plaintiff and Aggrieved Employees’ compensable
12 work time spent under the control of Defendants was accounted for and compensated.
13 Specifically, Plaintiff is informed and believes that Defendants (1) adjusted clock in and clock
14 out times to the disadvantage of Plaintiff and other Aggrieved Employees by rounding up clock-
15 in times when Plaintiff and Aggrieved Employees clocked-in before the scheduled start of their
16 respective shifts and rounded down clock-out times when Plaintiff and Aggrieved Employees
17 worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff and
18 Aggrieved Employees to continue working when ostensibly on duty-free meal periods, or
19 requiring them to return to work before the end of their thirty-minute meal periods but prohibiting
20 them from clocking back in until the legally required thirty-minute mark.

21 20. Based on information and belief, Plaintiff believes he and Aggrieved Employees
22 were also not being reimbursed for all necessary expenses incurred in the performance of their
23 job duties. Specifically, Defendants required Plaintiff and Aggrieved Employees, regardless of
24 classification, to use their personal cellular telephones to communicate with colleagues and
25 supervisors in the course of performing their respective duties but failed to reimburse them for
26 use of the personal cellular devices nor the consumption of their personal data plan. Specifically,
27 Plaintiff was required to communicate with the registered nurse via text message if a patient
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1 needed a wheelchair.

2 21. Defendants failed to authorize and permit all required meal and rest periods for
3 Plaintiff and Aggrieved Employees because, upon information and belief, Defendants maintained
4 unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendants
5 regularly did not staff enough employees to provide sufficient coverage to maintain their business
6 operations so Plaintiff and Aggrieved Employees could not both complete their assigned daily
7 duties and take complete, timely and uninterrupted meal and rest breaks. Defendants prioritized
8 completion of daily duties and patient satisfaction ahead of meal and rest period compliance.
9 Defendants failed to provide Plaintiff and Aggrieved Employees with an additional hour of
10 premium pay at the regular rate of pay for each meal/rest period violation, as required by Labor
11 Code section 226.7.

12 22. As a result of the violations described above, Plaintiff and Aggrieved Employees
13 experienced collateral or derivative violations. Specifically, Defendants failed to provide Plaintiff
14 and Aggrieved Employees accurate itemized wage statements in writing in compliance with
15 Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for all
16 wages owed at the time employment with Defendant had ended.

17 23. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
18 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
19 departments, divisions, commissions, boards, agencies or employees for violation of the code
20 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
21 behalf of himself and other current or former employees pursuant to the procedures specified in
22 Labor Code section 2699.3.

23 24. For all provisions of the Labor Code except those for which a civil penalty is
24 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
25 penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
26 initial violation, and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
27 for each subsequent pay period if certain conditions are met.
28

1 25. Defendants' conduct during the PAGA period with respect to Plaintiff and
2 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

3 26. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and
4 hour violations under the California Labor Code and IWC Wage Orders.

5 27. At all relevant times herein, Defendants employed Plaintiff and Aggrieved
6 Employees who were subject to the employment policies described herein, in whole or in part,
7 and therefore suffered at least one or more of the violations set forth herein.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
9 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
10 all hours worked, including the applicable minimum, regular, and overtime wages, and that they
11 were not receiving all wages earned for work that was required to be performed. In violation of
12 the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and Aggrieved
13 Employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and Aggrieved
14 Employees all earned minimum, regular, and/or overtime compensation.
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16 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
18 meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
19 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
20 violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy
21 of not providing timely meal periods. Defendants failed to pay an additional hour of pay to
22 Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendants' unlawful
23 policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods or
24 payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular rate
25 of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

26 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
27 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
28 rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'

1 regular rate of pay when they did not receive a timely, uninterrupted off-duty rest period. In
2 violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy
3 of not providing timely rest periods. Defendants failed to pay an additional hour of pay to Plaintiff
4 and Aggrieved Employees for each rest period that was not provided or was interrupted. As a
5 result of Defendants' unlawful policy and practice, Plaintiff and Aggrieved Employees did not
6 receive all required rest periods or payment of one (1) additional hour of pay at Plaintiff's and
7 Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted 10
8 minute off-duty rest period.

9 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
10 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
11 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
12 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
13 time periods, upon separation of employment.

14 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
15 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
16 wage statements that accurately showed their actual hours worked, total hours worked, number
17 of hours worked at each hourly rate, gross and net wages earned, and correct employer
18 information in accordance with California law. As a result of the wage violations specified above,
19 and in violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided with
20 accurate itemized wage statements that accurately reported their gross and net wages earned, total
21 hours worked, each applicable rate of pay in effect during the pay period with the corresponding
22 number of hours worked, and the address of the legal entity that is the employer, among other
23 things.

24 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Defendants were required to maintain accurate records of the hours
26 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendants failed
27 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
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1 off-the-clock and/or unfair rounding practices, among other things.

2 **FIRST CAUSE OF ACTION**

3 **(Civil Penalties Under the Private Attorneys General Act,**

4 **Labor Code § 2699 et seq., for Violations of the Labor Code)**

5 34. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
6 Complaint as if set forth in full herein.

7 35. By this Complaint, Plaintiff brings this case as a representative action seeking
8 penalties for himself, the Aggrieved Employees, and the State of California in a representative
9 capacity, as provided by the PAGA, Labor Code sections 2698 *et seq.* Plaintiff is an Aggrieved
10 Employee who was employed by Defendants and subject to at least one of the Labor Code
11 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
12 his or her notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203,
13 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198
14 and 2802.

15 36. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
16 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
17 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
18 not to investigate, or after 65 days have passed without notice from the LWDA.

19 37. Prior to filing this Complaint, on or about January 22, 2025, Plaintiff gave written
20 notice of the specific provisions alleged to have been violated, including the facts and theories to
21 support the alleged violations, as required by Labor Code section 2699.3 to Defendants. The
22 written notice was given via certified mail to Defendants, and the LWDA by electronically filing
23 the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case
24 number.

25 38. The LWDA has not provided Plaintiff with any notice that it intends to investigate
26 the violations as alleged in Plaintiff's notices, and more than 65 calendar days have elapsed since
27 the postmark date on the latter notice.
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39. California Labor Code §§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.”

40. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil penalties for Defendants' Labor Code violations.

First Violation

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

41. Under California Labor Code §512(a), “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

42. Defendants violated Labor Code § 512 by failing to provide Plaintiff and Aggrieved Employees who worked shifts of greater than five hours, uninterrupted, complete, and/or timely meal periods within the first five hours of the shifts worked. Defendants, furthermore, did not provide the requisite second meal period after working more than 10 hours.

43. Defendants failed to pay Plaintiff one (1) hour of pay at Plaintiff's regular rate of pay for each day Defendants failed to provide a meal period in compliance with section 512.

Second Violation

(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)

44. Under California Labor Code §226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

45. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize

1 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
2 of each work period. The authorized rest period time shall be based on the total hours worked
3 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

4 46. Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to
5 take rest periods and mandated by the Wage Order.

6 47. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
7 one additional hour of pay at the employee’s regular rate of compensation for each workday that
8 the meal or rest or recovery period is not provided.”

9 48. Defendants failed to pay Plaintiff and Aggrieved Employees who were not
10 provided rest periods one hour of pay at their regular rate of pay.

11 **Third Violation**

12 **(Failure to Provide Complete and Accurate Wage Statements,**
13 **in Violation of Labor Code Section 226)**

14 49. Under California Labor Code §226(a), an employer is legally obligated to provide
15 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
16 in writing...”

17 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
18 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
19 Labor Code § 2699.

20 **Fourth Violation**

21 **(Failure to Pay Minimum Wages)**

22 51. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
23 payment to an employee of less than the applicable minimum wage for all hours worked in a
24 payroll period is unlawful.

25 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
26 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
27 Labor Code § 2699.
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1 **Fifth Violation**

2 **(Failure to Pay Overtime Wages)**

3 53. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
4 employer is required to compensate employees for all overtime, which is calculated at one and
5 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
6 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
7 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
8 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
9 any workweek.

10 54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
11 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
12 Labor Code § 2699.

13 **Sixth Violation**

14 **(Failure to Timely Pay Wages During Employment)**

15 55. Pursuant to California Labor Code § 204, for all labor performed between the 1st
16 and 15th days of any calendar month, an employer is required to pay its employees between the
17 16th and 26th day of the month during which the labor was performed. California Labor Code §
18 204 also provides that for all labor performed between the 16th and 26th days of any calendar
19 month, Defendant was required to pay their employees between the 1st and 15th day of the
20 following calendar month. In addition, California Labor Code § 204 provides that all wages
21 earned for labor in excess of the normal work period shall be paid no later than the payday of the
22 next regular payroll period.

23 56. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
24 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
25 Labor Code § 2699.

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1 **Seventh Violation**

2 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

3 57. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
4 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
5 201 mandates that if an employer discharges an employee, the employee's wages accrued and
6 unpaid at the time of discharge are due and payable immediately.

7 58. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
8 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
9 Labor Code § 2699.

10 **Eighth Violation**

11 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

12 **(Against all Defendants and DOES 1 to 50, inclusive)**

13 59. Labor Code § 2802 provides that an employer shall indemnify his or her employee
14 for all necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of his or her duties, or of his or her obedience to the directions of the employer.

16 60. Defendants failed to indemnify and reimburse Plaintiff for all necessary
17 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
18 job duties.

19 61. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
20 incurred as a result of discharging his or her duties, including interest.

21 62. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
22 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
23 Labor Code § 2699.

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PRAYER FOR RELIEF

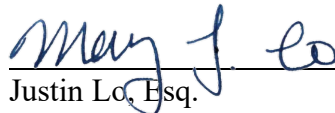
WHEREFORE, Plaintiff prays for the following relief:

1. For penalties in an amount according to proof;
2. For reasonable attorney's fees and costs pursuant to PAGA; and
3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

Dated: April 18, 2025

WORK LAWYERS PC



Justin Lo, Esq.

May T. To, Esq.

Attorneys for Plaintiff ANGELO Q. DEL
ROSARIO and Aggrieved Employees