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Attorneys for Plaintiff(s),

LISA GUTIERREZ MENDEZ, and all others similarly situated

(additional attorneys for Plaintiff(s) on next page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

**(UNLIMITED JURISDICTION)**

LISA GUTIERREZ MENDEZ, on behalf of herself and all others similarly situated, and the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” and the State of California under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff,*

vs.

INFINITE CA INVESTMENTS LLC, a California limited liability company; RISE WELLNESS CENTER LLC, a California limited liability company; INFINITE RECOVERY SOLUTIONS LLC, a California limited liability company; RISE WELLNESS CENTER II, an entity of unknown form; and DOES 1–50, inclusive,

*Defendants.*

**FILED**

Superior Court of California  
County of Los Angeles

05/22/2025

David W. Stryker, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

Case No. 25STCV10959

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and
8. Civil Penalties (Lab. Code §§ 2898, *et seq.*)

**JURY TRIAL DEMANDED**



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1 Plaintiff, Lisa Gutierrez Mendez (hereafter “Plaintiff” or “Gutierrez Mendez”), on behalf  
2 of herself and all others similarly situated, the general public, and as an “aggrieved employee” on  
3 behalf of other “aggrieved employees” and the State of California under the Labor Code Private  
4 Attorneys General Act of 2004, complains and alleges as follows:

## 5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the  
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage  
8 Order”), and the California Business and Professions Code against Defendants Infinite CA  
9 Investments LLC, a California limited liability company, Rise Wellness Center LLC, a California  
10 limited liability company, Infinite Recovery Solutions LLC, a California limited liability  
11 company, Rise Wellness Center II, an entity of unknown form, and Does 1 through 50, inclusive  
(collectively “Defendants”).

12 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her  
13 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related  
14 relief. These claims are based on Defendants’ failures to:

15 (A) Pay all wages, including minimum, regular, overtime and doubletime  
16 wages, earned for all hours worked at the correct rates of pay;

17 (B) Provide all meal periods;

18 (C) Authorize and permit all rest breaks;

19 (D) Pay premium wages for unprovided meal periods;

20 (E) Pay premium wages for unprovided rest breaks;

21 (F) Indemnify for necessary work-related expenditures;

22 (G) Issue only accurate and complete itemized wage statements; and

23 (H) Timely pay wages upon termination of employment;

24 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,  
25 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class  
26 action.

## 27 **II. THE PARTIES**

28 3. Plaintiff Lisa Gutierrez Mendez is a resident of California. At all relevant times,  
Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050  
and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).



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1           4. Defendant Infinite CA Investments LLC is a limited liability company organized  
2 and existing under the laws of California and also a citizen of California based on Plaintiff's  
3 information and belief.

4           5. Defendant Rise Wellness Center LLC is a limited liability company organized and  
5 existing under the laws of California and also a citizen of California based on Plaintiff's  
6 information and belief.

7           6. Defendant Infinite Recovery Solutions LLC is a limited liability company  
8 organized and existing under the laws of California and also a citizen of California based on  
9 Plaintiff's information and belief.

10          7. Defendant Rise Wellness Center II is an entity of unknown form organized and  
11 existing under the laws of California and also a citizen of California based on Plaintiff's  
12 information and belief.

13          8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
14 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but  
15 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
16 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
17 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants  
18 when ascertained.

19          9. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
20 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
21 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act  
22 within the course and scope of such agency, employment, direction and control, and with the  
23 approval and ratification of each of the other Defendants.

24          10. At all relevant times, in perpetrating the acts and omissions alleged herein,  
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack  
26 of a practice which resulted in Defendants not compensating Plaintiff and the other Class  
27 Members or otherwise complying with their rights in accordance with applicable California labor  
28 laws as alleged herein.



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1 11. At all relevant times, in perpetrating the acts and omissions alleged herein,  
2 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or  
3 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-  
4 described class in accordance with applicable laws as alleged herein.

5 **III. CLASS ALLEGATIONS**

6 12. This action has been brought and may be maintained as a class action pursuant to  
7 California Code of Civil Procedure section 382 because there is a well-defined community of  
8 interest among the persons who comprise the readily ascertainable class defined below and  
9 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as  
10 a class action.

11 13. **Class Definition:** The Class is defined as follows: All persons Defendants  
12 employed in California as hourly and non-exempt, including resident advisors, individuals  
13 performing work comparable to the aforementioned, compensated comparably to the  
14 aforementioned, individuals in similar positions, at any time during the period beginning four  
15 years prior to the filing of this action and ending on the date that final judgment is entered in this  
16 action (“Class” or “Class Members”).

17 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the  
18 right to amend or modify the class definition with greater specificity, by further division into  
19 subclasses and/or by limitation to particular issues.

20 15. **Numerosity:** The Class Members are so numerous that the individual joinder of  
21 each individual Class Member is impractical. While Plaintiff does not currently know the exact  
22 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the  
23 minimum required for numerosity under California laws.

24 16. **Commonality and Predominance:** Common questions of law and fact exist as to  
25 all Class Members and predominate over any questions which affect only individual Class  
26 Members. These questions include, but are not limited to:

27 A. Whether Defendants failed to pay all wages earned to Class Members for  
28 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,



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meal period premium, and rest period premium wages;

B. Whether Defendants subjected wages to discount;

C. Whether Defendants unlawfully deducted wages from Class Members;

D. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

E. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

F. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

G. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

H. Whether Defendants willfully failed to provide the class with timely final wages;

I. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

J. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced



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1 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of  
2 Plaintiff and absent Class Members.

3 20. **Superiority:** A class action is vastly superior to other available means for fair and  
4 efficient adjudication of Class Members' claims and would be beneficial to the parties and the  
5 Court. Class action treatment will allow a number of similarly situated persons to simultaneously  
6 and efficiently prosecute their common claims in a single forum without the unnecessary  
7 duplication of effort and expense that numerous individual actions would entail. In addition, the  
8 monetary amounts due to many individual Class Members are likely to be relatively small and  
9 would thus make it difficult, if not impossible, for individual Class Members to both seek and  
10 obtain relief. Moreover, a class action will serve an important public interest by permitting Class  
11 Members to effectively pursue the recovery of monies owed to them. Further, a class action will  
12 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

#### 13 **IV. STATEMENT OF FACTS**

14 21. The Wage Order applies to "all persons employed in the public housekeeping  
15 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The  
16 Wage Order defines "Public Housekeeping Industry" to mean

17 any industry, business, or establishment which provides meals, housing, or  
18 maintenance services whether operated as a primary business or when incidental  
19 to other operations in an establishment not covered by an industry order of the  
Commission, and includes, but is not limited to the following:

- 20 (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions,  
21 homes for the aged, and similar establishments offering board or lodging  
22 in addition to medical, surgical, nursing, convalescent, aged, or child care;  
23 (7) Establishments providing veterinary or other animal care services.

24 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,  
25 Gutierrez Mendez, and all of the Class Members were covered by the Wage Order because the  
26 Defendants operated, and Gutierrez Mendez, and all of the Class Members, worked for one or  
27 more residential care facilities. Accordingly, Gutierrez Mendez and all of the other Class  
28 Members are entitled to the protections the Wage Order provides.



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1           22.     On approximately January 15, 2024, the Defendants began to employ Gutierrez  
2 Mendez in Los Angeles in the position of resident advisor. The Defendants continuously  
3 employed her in that capacity until on or about July 26, 2024 when her employment ended.

4           23.     At all relevant times, the Defendants issued wages to Gutierrez Mendez and all of  
5 the other Class Members on a semimonthly (24 paychecks/year) basis and paid them on a  
6 semimonthly basis. At all relevant times, the Defendants classified Gutierrez Mendez and all of  
7 the other Class Members as non-exempt employees entitled to the protections of the Labor Code  
8 and the Wage Order.

9           24.     At all relevant times, the Defendants failed to compensate Gutierrez Mendez and  
10 all of the other Class Members for all hours worked at the applicable minimum or regular rates of  
11 pay. The Defendants required Mendez Gutierrez and the other Class Members to work off-the-  
12 clock, including administering medication to the Defendants' patients.

13           25.     At all relevant times, the Defendants failed to compensate Gutierrez Mendez and  
14 all of the other Class Members at the correct rates of pay for all hours worked over eight in a day,  
15 over 40 in a week, and for the first eight hours of the seventh day of the workweek. The  
16 Defendants required Mendez Gutierrez and the other Class Members to work over eight hours per  
17 day, over 40 hours per week, and on the seventh day of the same workweek. The Defendants  
18 required Mendez Gutierrez and the other Class Members to work off-the-clock, including  
19 administering medication to the Defendants' patients, and such work often caused Mendez  
20 Gutierrez and the other Class Members to work to work into overtime hours.

21           26.     At all relevant times, the Defendants failed to compensate Gutierrez Mendez and  
22 all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day,  
23 and all over the first eight of the seventh day of the workweek. The Defendants required Mendez  
24 Gutierrez and the other Class Members to work over 12 hours per day and over eight hours on  
25 the seventh day of the same workweek. The Defendants required Mendez Gutierrez and the other  
26 Class Members to work off-the-clock, including administering medication to the Defendants'  
27 patients, and such work often caused Mendez Gutierrez and the other Class Members to work to  
28 work into double-time hours.



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1           27.     At all relevant times, the Defendants failed to provide Gutierrez Mendez and all  
2 of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants  
3 required Mendez Gutierrez and the other Class Members to work through meal periods and to  
4 take them more than five hours into their work shifts. The Defendants also failed to pay premium  
5 wages for days on which they failed to provide Gutierrez Mendez and all of the other Class  
6 Members with meal periods as required by law.

7           28.     At all relevant times, the Defendants failed to authorize and permit Gutierrez  
8 Mendez and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every  
9 four hours worked or major portion thereof. The Defendants required Mendez Gutierrez and the  
10 other Class Members to work through rest breaks. The Defendants also failed to pay premium  
11 wages for days on which they failed to authorize and permit Gutierrez Mendez and all of the other  
12 Class Members to take rest breaks as required by law.

13           29.     At all relevant times, the Defendants required Gutierrez Mendez and all of the  
14 other Class Members to incur certain business expenses in the course of performing their duties.  
15 The Defendants required Gutierrez Mendez and all of the other Class Members to supply mobile  
16 phones to perform their job duties. However, the Defendants did not provide these items and did  
17 not reimburse Gutierrez Mendez and the other Class Members for these items. The Defendants  
18 required Mendez Gutierrez and the other Class Members to use their personal mobile phones to  
19 perform their job duties, though the Defendants did not reimburse Mendez Gutierrez and the other  
20 Class Members for such mobile phone use and did not provide an alternative to use of personal  
21 mobile phones to perform their job duties. Such use included the Kipu Health application.

22           30.     At all relevant times, the Defendants failed to issue to Gutierrez Mendez and all of  
23 the other Class Members complete and accurate wage statements that state all hours worked at  
24 the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed  
25 to state on the wage statements they issued to Gutierrez Mendez and all of the other Class  
26 Members the unpaid wages discussed above. The wage statements fail to state all minimum wages  
27 earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all  
28 meal period premium wages earned, all rest break premium wages earned, and related



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1 information.

2 31. At all relevant times, the Defendants also failed to timely pay Gutierrez Mendez  
3 and all of the other Class Members all earned wages as described above during and at the  
4 conclusion of employment.

5 32. At all relevant times, the Defendants failed to maintain accurate employee records  
6 of Gutierrez Mendez and all of the other Class Members.

7 33. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'  
8 unlawful practices and policies, Plaintiff and the Class Members were:

- 9 A. Not provided with all off duty meal periods;
- 10 B. Not authorized and permitted to take all rest break periods;
- 11 C. Not paid one hour's pay for each workday in which Defendants failed to  
12 authorize and permit them to take one or more timely rest periods;
- 13 D. Not paid one hour's pay for each workday in which Defendants failed to  
14 provide them with one or more timely meal periods;
- 15 E. Not paid all wages earned, including, but not limited to, minimum, regular,  
16 overtime, and doubletime wages for work performed while clocked out;
- 17 F. Not indemnified for all necessary business expenditures incurred during  
18 the discharge of their duties;
- 19 G. Not provided with accurate and complete wage statements; and
- 20 H. Not timely paid all earned and unpaid wages at the time their employment  
21 ended.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**  
24 **CORRECT RATES**

25 **Lab. Code §§ 510, 1194, 1197, and 1198**

26 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

27 34. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 35. At all relevant times, Plaintiff and the Class Members have been non-exempt  
employees entitled to the protections of both the Labor Code and the Wage Order.



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1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**  
2 **THE CORRECT RATES OF PAY**

3 36. Section 2 of the Wage Order defines “hours worked” as “the time during which an  
4 employee is subject to the control of an employer, and includes all the time the employee is  
5 suffered or permitted to work, whether or not required to do so.”

6 37. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to  
9 employees 18 years of age or over and to employees 16 or  
10 17 years of age who are not required by law to attend  
11 school and are not otherwise prohibited by law from  
12 engaging in the subject work. Such employees shall not be  
13 employed more than eight (8) hours in any workday or  
14 more than 40 hours in any workweek unless the employee  
15 receives one and one-half (1 ½) times such employee’s  
16 regular rate of pay for all hours worked over 40 hours in  
17 the workweek. Eight (8) hours of labor constitutes a day’s  
18 work. Employment beyond eight (8) hours in any workday  
19 or more than six (6) days in any workweek is permissible  
20 provided the employee is compensated for such overtime  
21 at not less than:

22 (a) One and one-half (1 ½) times the employee’s  
23 regular rate of pay for all hours worked in excess of  
24 eight (8) hours up to and including 12 hours in any  
25 workday, and for the first eight (8) hours worked on  
26 the seventh (7<sup>th</sup>) consecutive day of work in a  
27 workweek.

28 (b) Double the employee’s regular rate of pay for all  
hours worked in excess of 12 hours in any workday  
and for all hours worked in excess of eight (8) hours  
on the seventh (7<sup>th</sup>) consecutive day of work in a  
workweek.

(c) The overtime rate of compensation required to be  
paid to a nonexempt full-time salaried employee  
shall be computed by using the employee’s regular  
hourly salary as one-fortieth (1/40) of the  
employee’s weekly salary.



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1           38.     Within the healthcare industry, the term “hours worked” means the time during  
2     which an employee is suffered or permitted to work for the employer, whether or not required to  
3     do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).  
4     Wage Order 5, § 2(K).The FLSA does not define the phrase “hours worked.” However, it is  
5     defined by federal regulations:

6                     “...As a general rule the term “hours worked” will include: (a) All time  
7     during which an employee is required to be on duty or to be on the  
8     employer’s premises or at a prescribed workplace and (b) all time during  
9     which an employee is suffered or permitted to work whether or not he is  
10    required to do so. Thus, working time is not limited to the hours spent in  
11    active productive labor, but includes time given by the employee to the  
12    employer even though part of the time may be spent in idleness. Some of  
13    the hours spent by employees, under certain circumstances... in meal  
14    periods and rest periods are regarded as working time and some are not.  
15    The governing principles are discussed in part 785 of this chapter  
16    (interpretative bulletin on “hours worked”) and part 790 of this chapter  
17    (statement of effect of Portal-to-Portal Act of 1947). ...”

18     29 C.F.R. § 778.223

19                     “The United States Supreme Court originally stated that employees  
20    subject to the act must be paid for all time spent in “physical or mental  
21    exertion (whether burdensome or not) controlled or required by the  
22    employer and pursued necessarily and primarily for the benefit of the  
23    employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v.*  
24    *Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court  
25    ruled that there need be no exertion at all and that all hours are hours  
26    worked which the employee is required to give his employer, that “an  
27    employer, if he chooses, may hire a man to do nothing, or to do nothing  
28    but wait for something to happen. Refraining from other activity often is  
29    a factor of instant readiness to serve, and idleness plays a part in all  
30    employments in a stand-by capacity. Readiness to serve may be hired,  
31    quite as much as service itself, and time spent lying in wait for threats to  
32    the safety of the employer’s property may be treated by the parties as a  
33    benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S.  
34    126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily  
35    includes “all the time during which an employee is necessarily required to  
36    be on the employer’s premises, on duty or at a prescribed work place.”  
37    *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-  
38    Portal Act did not change the rule except to provide an exception for  
39    preliminary and postliminary activities. See Section 785.34.”



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1 29 C.F.R. § 785.7.

2 “Rest periods of short duration, running from 5 minutes to about 20  
3 minutes, are common in industry. They promote the efficiency of the  
4 employee and are customarily paid for as working time. They must be  
5 counted as hours worked. Compensable time of rest periods may not be  
6 offset against other working time such as compensable waiting time or on-  
7 call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,  
8 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.  
9 Cal. 1945))”

10 29 C.F.R. § 785.18.

11 “Bona fide meal periods are not worktime. Bona fide meal periods do not  
12 include coffee breaks or time for snacks. These are rest periods. The  
13 employee must be completely relieved from duty for the purposes of  
14 eating regular meals. Ordinarily 30 minutes or more is long enough for a  
15 bona fide meal period. A shorter period may be long enough under special  
16 conditions. The employee is not relieved if he is required to perform any  
17 duties, whether active or inactive, while eating. For example, an office  
18 employee who is required to eat at his desk or a factory worker who is  
19 required to be at his machine is working while eating. *Culkin v. Glenn L.  
20 Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d  
21 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock  
& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff’d 194 F. 2d 493 (C.A.  
22 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187  
23 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3  
24 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton  
v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.  
25 61,271 (N.D. Okla. 1942); aff’d 136 F. 2d 359 (C.A. 10, 1943); cert.  
26 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases  
27 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz  
Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

28 29 C.F.R. § 785.19. Healthcare employees who are required to wear pagers and respond to patient  
emergencies during meal breaks are entitled to payment from their employer for meal breaks  
because their employer has not fully relieved them of their responsibilities during those times.  
*Hoffman v. St. Joseph’s Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also  
*Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)  
(employees required to work during half hour meal break given that they had to stay at the facility  
and be available to respond to requests to return or check out weapons and equipment); *Wahl v.  
Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police



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1 officers stated a claim under the Fair Labor Standards Act where they alleged that they were not  
2 paid for meal periods but were required to remain within a certain area, respond to emergencies  
3 and citizen requests, and remain accessible).

4 39. Section 4 of the Wage Order requires an employer to pay non-exempt employees  
5 at least the minimum wage set forth therein for all hours worked, which consists of all hours that  
6 an employer has actual or constructive knowledge that employees are working.

7 40. Labor Code section 510 states:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight hours  
9 in one workday and any work in excess of 40 hours in any one workweek and the  
10 first eight hours worked on the seventh day of work in any one workweek shall be  
11 compensated at the rate of no less than one and one-half times the regular rate of  
12 pay for an employee. Any work in excess of 12 hours in one day shall be  
13 compensated at the rate of no less than twice the regular rate of pay for an  
14 employee. In addition, any work in excess of eight hours on any seventh day of a  
15 workweek shall be compensated at the rate of no less than twice the regular rate of  
16 pay of an employee. Nothing in this section requires an employer to combine more  
17 than one rate of overtime compensation in order to calculate the amount to be paid  
18 to an employee for any hour of overtime work.

19 41. Labor Code section 1194 invalidates any agreement between an employer and an  
20 employee to work for less than the minimum wage required under the applicable Wage Order.

21 42. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
22 less than the minimum wage required under the applicable Wage Order for all hours worked  
23 during a payroll period.

24 43. Labor Code section 1198 makes it unlawful for an employer to employ an  
25 employee under conditions that violate the Wage Order.

26 44. In conjunction, these provisions of the Labor Code require employers to pay non-  
27 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours  
28 worked, including unrecorded hours when the employer knew or reasonably should have known  
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22  
Cal.4th 575, 585.)

45. At all relevant times during the applicable limitations period, Defendants failed to  
compensate Plaintiff and the Class Members for all hours worked, including, but not limited to



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1 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and  
2 doubletime hours, respectively, that they worked at the correct rates of pay.

3 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'  
5 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct  
6 rates of pay as required by California law.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Lab. Code §§ 226.7 and 512**

10 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

11 47. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

12 48. At all relevant times during the applicable limitations period, Plaintiff and the  
13 Class Members have been employees of Defendants and entitled to the benefits and protections  
14 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

15 49. In relevant part, California Labor Code § 1198 states:

16 The maximum hours of work and the standard conditions of labor fixed by the  
17 commission shall be the maximum hours of work and the standard conditions of  
18 labor for employees. The employment of any employee for longer hours than those  
19 fixed by the order or under conditions of labor prohibited by the order is unlawful.

20 50. Within the healthcare industry, the term “hours worked” means the time during  
21 which an employee is suffered or permitted to work for the employer, whether or not required to  
22 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).  
23 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is  
24 defined by federal regulations:

25 ...As a general rule the term “hours worked” will include: (a) All time  
26 during which an employee is required to be on duty or to be on the  
27 employer’s premises or at a prescribed workplace and (b) all time during  
28 which an employee is suffered or permitted to work whether or not he is  
required to do so. Thus, working time is not limited to the hours spent in  
active productive labor, but includes time given by the employee to the  
employer even though part of the time may be spent in idleness. Some of  
the hours spent by employees, under certain circumstances... in meal  
periods and rest periods are regarded as working time and some are not.



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1 The governing principles are discussed in part 785 of this chapter  
2 (interpretative bulletin on “hours worked”) and part 790 of this chapter  
(statement of effect of Portal-to-Portal Act of 1947). ...

3 29 C.F.R. § 778.223

4  
5 The United States Supreme Court originally stated that employees subject  
6 to the act must be paid for all time spent in “physical or mental exertion  
7 (whether burdensome or not) controlled or required by the employer and  
8 pursued necessarily and primarily for the benefit of the employer and his  
9 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*  
10 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need  
11 be no exertion at all and that all hours are hours worked which the  
12 employee is required to give his employer, that “an employer, if he  
13 chooses, may hire a man to do nothing, or to do nothing but wait for  
14 something to happen. Refraining from other activity often is a factor of  
15 instant readiness to serve, and idleness plays a part in all employments in  
16 a stand-by capacity. Readiness to serve may be hired, quite as much as  
17 service itself, and time spent lying in wait for threats to the safety of the  
employer’s property may be treated by the parties as a benefit to the  
employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*  
*Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time  
during which an employee is necessarily required to be on the employer’s  
premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens*  
*Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change  
the rule except to provide an exception for preliminary and postliminary  
activities. See Section 785.34.

18 29 C.F.R. § 785.7.

19  
20 Rest periods of short duration, running from 5 minutes to about 20  
21 minutes, are common in industry. They promote the efficiency of the  
22 employee and are customarily paid for as working time. They must be  
23 counted as hours worked. Compensable time of rest periods may not be  
offset against other working time such as compensable waiting time or on-  
call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,  
1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.  
Cal. 1945))

25 29 C.F.R. § 785.18.

26  
27 Bona fide meal periods are not worktime. Bona fide meal periods do not  
28 include coffee breaks or time for snacks. These are rest periods. The  
employee must be completely relieved from duty for the purposes of  
eating regular meals. Ordinarily 30 minutes or more is long enough for a



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1           bona fide meal period. A shorter period may be long enough under special  
2 conditions. The employee is not relieved if he is required to perform any  
3 duties, whether active or inactive, while eating. For example, an office  
4 employee who is required to eat at his desk or a factory worker who is  
5 required to be at his machine is working while eating. *Culkin v. Glenn L.*  
6 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d  
7 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*  
8 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.  
9 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187  
10 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3  
11 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton*  
12 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.  
13 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.  
14 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases  
15 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*  
16 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

17 29 C.F.R. § 785.19. Healthcare employees who were required to wear pagers and respond  
18 to patient emergencies during meal breaks were held entitled to payment from their  
19 employer for meal breaks because their employer had not fully relieved them of their  
20 responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS  
21 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016  
22 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour  
23 meal break given that they had to stay at the facility and be available to respond to requests  
24 to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988  
25 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the  
26 Fair Labor Standards Act where they alleged that they were not paid for meal periods but  
27 were required to remain within a certain area, respond to emergencies and citizen  
28 requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health  
care industry who work shifts in excess of eight (8) total hours in a  
workday may voluntarily waive their right to one of their two meal  
periods. In order to be valid, any such waiver must be documented in a  
written agreement that is voluntarily signed by both the employee and the  
employer. The employee may revoke the waiver at any time by providing  
the employer at least one day's written notice. The employee shall be fully  
compensated for all working time, including any on-the-job meal period,  
while such a waiver is in effect.



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1 Wage Order 5, § 11(D).

2 51. In relevant part, In relevant part, California Labor Code § 512 states:

3 An employer shall not employ an employee for a work period of  
4 more than five hours per day without providing the employee with  
5 a meal period of not less than 30 minutes, except that if the total  
6 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.

7 An employer shall not employ an employee for a work period of  
8 more than 10 hours per day without providing the employee with  
9 a second meal period of not less than 30 minutes, except that if the  
10 total hours worked is no more than 12 hours, the second meal  
11 period may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

12 52. In relevant part, Section 11 of the Wage Order states:

13 **Meal Periods**

14 (A) No employer shall employ any person for a work period of  
15 more than five (5) hours without a meal period of not less  
16 than 30 minutes, except that when a work period of not  
17 more than six (6) hours will complete the day's work the  
18 meal period may be waived by mutual consent of the  
19 employee and the employee. Unless the employee is  
relieved of all duty during a 30 minute meal period, the  
meal period shall be considered an 'on duty' meal period  
and counted as time worked. An 'on duty' meal period shall  
be permitted only when the nature of the work prevents an  
employee from being relieved of all duty and when by  
written agreement between the parties an on-the-job paid  
meal period is agreed to. The written agreement shall state  
that the employee may, in writing, revoke the agreement at  
any time.

21 (B) If an employer fails to provide an employee a meal period  
22 in accordance with the applicable provisions of this Order,  
23 the employer shall pay the employee one (1) hour of pay at  
24 the employee's regular rate of compensation for each work  
25 day that the meal period is not provided.

26 53. In relevant part, California Labor Code § 226.7 states:

27 (b) An employer shall not require an employee to work during  
28



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a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants required Mendez Gutierrez and the other Class Members to work through meal periods and to take them more than five hours into their work shifts.

56. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

57. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

58. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages  
2 owed for all meal periods not provided to them.

3 59. By reason of the above, Plaintiff and the Class Members are entitled to premium  
4 wages for workdays in which one or more meal periods were not provided to them pursuant to  
5 California Labor Code § 226.7.

### 6 **THIRD CAUSE OF ACTION**

#### 7 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

##### 8 **Lab. Code § 226.7**

##### 9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

10 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

11 61. At all relevant times during the applicable limitations period, Plaintiff and the  
12 Class Members have been employees of Defendants and entitled to the benefits and protections  
13 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

14 62. In relevant part, California Labor Code § 1198 states:

15 The maximum hours of work and the standard conditions of labor  
16 fixed by the commission shall be the maximum hours of work and  
17 the standard conditions of labor for employees. The employment  
18 of any employee for longer hours than those fixed by the order or  
19 under conditions of labor prohibited by the order is unlawful.

20 63. In relevant part, Section 12 of the Wage Order states:

##### 21 **Rest Periods**

22 (A) Every employer shall authorize and permit all employees  
23 to take rest periods, which insofar as practicable shall be in the  
24 middle of each work period. The authorized rest period time shall  
25 be based on the total hours worked daily at the rate of ten (10)  
26 minutes net rest time per four (4) hours or major fraction thereof.  
27 However, a rest period need not be authorized for employees  
28 whose total daily work time is less than three and one-half (3 1/2)  
hours. Authorized rest period time shall be counted as hours  
worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in  
accordance with the applicable provisions of this Order, the  
employer shall pay the employee one (1) hour of pay at the



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employee's regular rate of compensation for each work day that the rest period is not provided.

64. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

65. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

66. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover,



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1 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed  
2 to authorize and permit them to take 10-minute rest periods every four hours worked or major  
3 fraction thereof.

4 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
6 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to  
7 take all rest breaks required by California law.

8 70. Defendants failed to provide Plaintiff with all required rest breaks in accordance  
9 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times  
10 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
11 which resulted in Defendants not providing the Class Members with all rest breaks required by  
12 California law.

13 71. Defendants failed to pay Plaintiff the additional wages required by California  
14 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and  
15 thereon alleges that, at relevant times within the applicable limitations period, Defendants have  
16 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the  
17 Class Members with additional wages for all rest breaks not provided to them as required by  
18 California Labor Code § 226.7.

19 72. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have  
20 suffered damages in amounts subject to proof to the extent they were not paid additional wages  
21 owed for all rest breaks not provided to them.

22 73. By reason of the above, Plaintiff and the Class Members are entitled to premium  
23 wages for workdays in which one or more rest breaks were not provided to them pursuant to  
24 California Labor Code § 226.7.

25 ///

26 ///

27 ///

28 ///



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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **Lab. Code § 2802**

4 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

5 74. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

6 75. In pertinent part, California Labor Code § 2802(a) states: “An employer shall  
7 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct  
8 consequence of the discharge of his or her duties.”

9 76. California Labor Code § 1198 prohibits employers from employing their  
10 employees under conditions prohibited by the Wage Order.

11 77. At all relevant times, Defendants required Plaintiff and the Class Members to incur  
12 certain business expenses in the course of performing their duties.

13 78. As described above, the Defendants required Gutierrez Mendez and all of the other  
14 Class Members to incur certain business expenses in the course of performing their duties. The  
15 Defendants required Gutierrez Mendez and all of the other Class members to supply mobile  
16 phones to perform their job duties. However, the Defendants did not provide these items and did  
17 not reimburse Gutierrez Mendez and the other Class members for these items. The Defendants  
18 required Mendez Gutierrez and the other Class Members to use their personal mobile phones to  
19 perform their job duties, though the Defendants did not reimburse Mendez Gutierrez and the other  
20 Class Members for such mobile phone use and did not provide an alternative to use of personal  
21 mobile phones to perform their job duties. Such use included the Kipu Health application.

22 79. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
23 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’  
24 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred  
25 during the course of performing their duties.

26 ///

27 ///

28 ///



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**FIFTH CAUSE OF ACTION**

**FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

**Lab. Code § 226**

**(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

**A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS**

80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

81. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if



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1 the employer fails to provide accurate and complete information as required by California Labor  
2 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement  
3 alone one or more of the following:

4 A. The amount of the gross wages or net wages paid to the employee during  
5 the pay period or any of the other information required to be provided on the itemized wage  
6 statement pursuant to California Labor Code § 226(a);

7 B. Which deductions the employer made from gross wages to determine the  
8 net wages paid to the employee during the pay period;

9 C. The name and address of the employer and, if the employer is a farm labor  
10 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name  
11 and address of the legal entity that secured the services of the employer during the pay period;

12 D. The name of the employee and only the last four digits of his or her social  
13 security number or an employee identification number other than a social security number; and

14 E. The number of piece-rate units earned and the piece rate.

15 83. “Promptly and easily determine,” as stated in California Labor Code § 226(e),  
16 means a reasonable person would be able to readily ascertain the information without reference  
17 to other documents or information.

18 84. As alleged herein, at all relevant times during the applicable limitations period,  
19 Defendants violated California Labor Code section 226 because they did not properly and  
20 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,  
21 the corresponding number of hours worked at each rate by the employee and other requirements  
22 of California Labor Code section 226. Defendants failed to state in the wage statements they  
23 issued to Plaintiff and the other Class Members all their hours worked and wages earned,  
24 including, but not limited to, regular and overtime wages for work they performed off-the-clock  
25 after clocking-out (as described above). Defendants knowingly and intentionally did not issue  
26 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or  
27 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class  
28 Members that state all minimum wages earned, all regular wages earned, all overtime wages



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1 earned, all doubletime wages earned, all meal period premium wages earned, and all rest break  
2 premium wages earned.

3 85. Defendants' failure to provide Plaintiff and the other Class Members with accurate  
4 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and  
5 the other Class Members with accurate wage statements but intentionally provided wage  
6 statements that Defendants knew were not accurate.

7 86. As a result of being provided with inaccurate wage statements by Defendants,  
8 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate  
9 wage statements were violated and they were misled about the amount of wages they had actually  
10 earned and were owed. In addition, the absence of accurate information on their wage statements  
11 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery  
12 and mathematical computations to determine the amounts of wages owed, has caused difficulty  
13 and expense in attempting to reconstruct time and pay records and/or has led to the submission of  
14 inaccurate information about wages to state and federal government agencies. Further, Plaintiff  
15 and the other Class Members were not able to ascertain from the wage statements whether  
16 Defendants complied with their obligations under California Labor Code section 226(a).

### 17 **SIXTH CAUSE OF ACTION**

#### 18 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

19 **(Lab. Code §§ 201, 202, and 203)**

20 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

21 87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 88. At all relevant times during the applicable limitations period, Plaintiffs and the  
23 Class have been non-exempt employees of Defendants and entitled to the benefits and protections  
24 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

25 89. Labor Code § 201 provides that all earned and unpaid wages of an employee who  
26 is discharged are due and payable immediately at the time of discharge.

27 90. Labor Code § 202 provides that all earned and unpaid wages of an employee who  
28 quits after providing at least 72-hours notice before quitting are due and payable at the time of  
quitting and that all earned and unpaid wages of an employee who quits without providing at least  
72-hours notice before quitting are due and payable within 72 hours.



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1           91.     The Defendants failed to pay Gutierrez Mendez and all of the other Class Members  
2 whose employment ended all of the earned but unpaid wages described above by the conclusion  
3 of their employment with Gutierrez Mendez, including minimum wages, regular wages, overtime  
4 wages, doubletime wages, meal period premium wages, and rest period premium wages.

5           92.     By failing to pay such earned wages to Plaintiff and the Class Members,  
6 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
7 § 201 or § 202.

8           93.     Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff  
9 and the Class Members all of their earned and unpaid wages (described above) have been willful  
10 in that, at all relevant times, Defendants have deliberately maintained policies and practices that  
11 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,  
12 they have had the ability to comply with those legal requirements.

13           94.     Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of  
14 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time  
15 penalties for each Class Member.

#### 16                               **SEVENTH CAUSE OF ACTION**

#### 17                               **UNFAIR COMPETITION**

18                               **(Bus. & Prof. Code §§ 17200, *et seq.*)**

19                               **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

20           95.     Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21           96.     At all relevant times during the applicable limitations period, Plaintiff and the  
22 Class Members have been employees of Defendants and entitled to the benefits and protections  
23 of the Business and Professions Code §§ 17200, *et seq.*

24           97.     The unlawful conduct of Defendants alleged herein amount to and constitutes  
25 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*  
26 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly  
27 gained a competitive advantage over other comparable companies doing business in California  
28 that comply with their legal obligations to compensate employees for all earned wages.

          98.     As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class  
Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,



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missed meal period premium wages, missed rest period premium wages, phone expenses, and comparable money and property.

99. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

100. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

### **EIGHTH CAUSE OF ACTION**

#### **CIVIL PENALTIES**

#### **Lab.Code §§ 2698, *et seq.***

**(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,  
against all Defendants)**

101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

102. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning March 17, 2024, and ending on the date that final judgment is entered in this action.

103. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period



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for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

104. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

105. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

106. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

107. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts



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1 established by California Labor Code § 558).

2 D. For violations of California Labor Code § 1174, five hundred dollars  
3 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty  
4 amounts established by Labor Code § 1174.5).

5 E. For violations of California Labor Code § 1197, one hundred dollars  
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred  
7 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period  
8 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
9 established by California Labor Code § 1197.1).

10 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
11 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for  
12 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay  
13 period for each subsequent violation (penalty amounts established by California Labor Code §  
14 2699(f)(2)).

15 108. Plaintiff has complied with the procedures for bringing suit specified in California  
16 Labor Code § 2699.3. By letter dated March 17, 2025, Plaintiff filed written notice online with  
17 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified  
18 mail to Defendants of the specific provisions of the California Labor Code alleged to have been  
19 violated, including the facts and theories to support the alleged violations. A true and correct copy  
20 of the notice to the LWDA dated March 17, 2025 is attached as Exhibit A. Plaintiff submitted her  
21 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response  
22 within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA  
23 will provide written notice to Plaintiff informing her that it does not intend to investigate these  
24 allegations.

25 109. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
26 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in  
27 connection with their claims for civil penalties.  
28

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**V. PRAYER FOR RELIEF**

110. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery time, and reporting time wages;
- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Civil penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

**VI. DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 22, 2025

By:   
\_\_\_\_\_  
DAVID G. SPIVAK, Attorney for  
Plaintiff, LISA GUTIERREZ  
MENDEZ, and all others similarly  
situated



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# **EXHIBIT A**



**\*SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL \***

March 17, 2025

Attn: PAGA Administrator  
Labor and Workforce Development Agency  
Attn: PAGA Administrator  
<http://dir.tflaforms.net>  
*Via Electronic Submission*

Re: Lisa Gutierrez Mendez / Rise Wellness

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Lisa Gutierrez Mendez (hereafter “Gutierrez Mendez” or “Complainant”) provides notice that Infinite CA Investments LLC, a California limited liability company, Rise Wellness Center LLC, a California limited liability company, Infinite Recovery Solutions, LLC, a California limited liability company, Rise Wellness Center II, an entity of unknown form, Rise Wellness II LLC, a California limited liability company, and related entities (collectively “the Rise Wellness Employers” or “the Employers”) violated his rights and those of all other individuals the Rise Wellness Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including resident advisors, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802, and related Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Gutierrez Mendez hereby provides this notice to the Labor & Workforce Development Agency and the Rise Wellness Employers and their agents and representatives.

At all relevant times, the Rise Wellness Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gutierrez Mendez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

On approximately January 15, 2024, the Rise Wellness Employers began to employ Gutierrez Mendez in Los Angeles in the position of hourly, non-exempt resident advisor. The Rise Wellness Employers continuously employed her in that capacity until on or about June 26, 2024 when her employment ended.

At all relevant times, the Rise Wellness Employers issued wages to Gutierrez Mendez and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Rise Wellness Employers classified Gutierrez Mendez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients.

The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients, and such work often caused Gutierrez Mendez and the other Aggrieved Employees to work into overtime hours.

The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients, and such work often caused Gutierrez Mendez and the other Aggrieved Employees to work into double-time hours.

At all relevant times, the Rise Wellness Employers failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work through meal periods and to take them more than five hours into their work shifts. The Rise Wellness Employers also failed to pay premium wages for days on which it failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Rise Wellness Employers failed to authorize and permit Gutierrez Mendez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work through rest breaks. The Rise Wellness Employers also failed to pay premium wages for days on which it failed to authorize and permit Gutierrez Mendez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Rise Wellness Employers required Gutierrez Mendez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Rise Wellness Employers required Gutierrez Mendez and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Rise Wellness Employers did not provide these items and did not reimburse Gutierrez Mendez and the other Aggrieved Employees for these items. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to use their personal mobile phones to perform their job duties, though the Rise Wellness Employers did not reimburse Gutierrez Mendez and the other Aggrieved Employees for such mobile phone use and did not provide an alternative to use of personal mobile phones to perform their job duties. Such use included the Kipu Health application.

At all relevant times, the Rise Wellness Employers failed to issue to Gutierrez Mendez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Rise Wellness Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Mendez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned.

The Rise Wellness Employers also failed to timely pay Gutierrez Mendez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

For the reasons stated herein, Gutierrez Mendez alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Rise Wellness Employers failed to pay Gutierrez Mendez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Rise Wellness Employers failed to provide Gutierrez Mendez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Rise Wellness Employers failed to authorize and permit Gutierrez Mendez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees at one hour's pay for each day in which the Rise Wellness Employers failed to provide them with one or more meal periods as required by law;
- (e) The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees at one hour's pay for each day in which the Rise Wellness Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Rise Wellness Employers failed to indemnify Gutierrez Mendez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Rise Wellness Employers knowingly and intentionally failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with complete and accurate wage statements;

- (h) The Rise Wellness Employers willfully failed to timely pay Gutierrez Mendez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Rise Wellness Employers and when their employment ended; and
- (i) The Rise Wellness Employers failed to maintain accurate employment records pertaining to Gutierrez Mendez and all of the other Aggrieved Employees.

Accordingly, Gutierrez Mendez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Rise Wellness Employers' alleged violations of the Labor Code and the Wage Order.

### **The Wage Order**

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to include

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Rise Wellness Employers, Gutierrez Mendez , and all of the Aggrieved Employees were covered by the Wage Order because the Rise Wellness Employers operated, and Gutierrez Mendez , and all of the Aggrieved Employees, worked for one or more residential care facilities. Accordingly, Gutierrez Mendez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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**Failure To Pay Wages For All Hours Worked At The Correct**  
**Rates of Pay**  
**(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the

subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Within the healthcare industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

"...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ..." 29 C.F.R. §

778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.” 29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any

duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who are required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients.

The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients, and such work often caused Gutierrez Mendez and the other Aggrieved Employees to work to work into overtime hours.

The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work off-the-clock, including administering medication to the Rise Wellness Employers' patients, and such work often caused Gutierrez Mendez and the other Aggrieved Employees to work to work into double-time hours.

At all relevant times during the applicable limitations period, the Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Gutierrez Mendez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Meal Periods**  
**(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.” Within the healthcare industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...” 29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.” 29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is

required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

“Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.”

Wage Order 5, § 11(D).

In relevant part, Labor Code section 512 states:

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. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (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, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and

Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Rise Wellness Employers failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with all timely meal periods. The Rise Wellness Employers denied Gutierrez Mendez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work through meal periods and to take them more than five hours into their work shifts. Furthermore, the Rise Wellness Employers failed to pay premium wages for days on which they failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gutierrez Mendez now seeks civil penalties for these Labor Code violations that the Rise Wellness Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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**Failure to Authorize and Permit Rest Periods**  
**(Lab. Code §§ 226.7 & 1198)**

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (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, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Rise Wellness Employers failed to authorize and permit Gutierrez Mendez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Rise Wellness Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to work through rest breaks. Moreover, the Rise Wellness Employers failed to pay Gutierrez Mendez and all of the other Aggrieved Employees premium wages on workdays the Rise Wellness Employers failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gutierrez Mendez now seeks civil penalties for these Labor Code violations that the Rise Wellness Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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**Failure to Reimburse for Expenses**  
**(Lab. Code §§ 1198 and 2802)**

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Rise Wellness Employers required Gutierrez Mendez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Rise Wellness Employers required Gutierrez Mendez and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Rise Wellness Employers did not provide these items and did not reimburse Gutierrez Mendez and the other Aggrieved Employees for these items. The Rise Wellness Employers required Gutierrez Mendez and the other Aggrieved Employees to use their personal mobile phones to perform their job duties, though the Rise Wellness Employers did not reimburse Gutierrez Mendez and the other Aggrieved Employees for such mobile phone use and did not provide an alternative to use of personal mobile phones to perform their job duties. Such use included the Kipu Health application. Additionally, the Rise Wellness Employers did not provide tools to

Gutierrez Mendez and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including mobile phones. Accordingly, Gutierrez Mendez seeks civil penalties for these Labor Code violations that the Rise Wellness Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

**Failure to Provide Complete and Accurate Wage Statements**  
**(Lab. Code § 226)**

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Rise Wellness Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Rise Wellness Employers failed to state in the wage statements they issued to Gutierrez Mendez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Rise Wellness Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Mendez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, and all rest break premium wages earned.

Accordingly, Gutierrez Mendez seeks civil penalties for the Labor Code violations that the Rise Wellness Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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**Failure To Provide Notice of Available Sick Leave**  
**(Labor Code § 246)**

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The Rise Wellness Employers failed to provide Gutierrez Mendez and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Gutierrez Mendez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Timely Pay Wages During Employment**  
**(Lab. Code § 204)**

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Rise Wellness Employers failed to timely pay all earned wages due during

employment within the time periods set by Labor Code section 204. Accordingly, Gutierrez Mendez now seeks civil penalties for the Labor Code violations that the Rise Wellness Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

**Failure to Timely Pay Wages Upon Termination of Employment**  
**(Lab. Code §§ 201, 202, and 203)**

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Rise Wellness Employers failed to pay Gutierrez Mendez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gutierrez Mendez , including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Gutierrez Mendez and all of the other Aggrieved Employees as set forth above at the end of employment, the Rise Wellness Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Gutierrez Mendez seeks civil penalties from the Rise Wellness Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Maintain Accurate Employment Records**  
**(Lab. Code §§ 1174 & 1198)**

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under

conditions prohibited by the Wage Order.

The Rise Wellness Employers failed to compensate Gutierrez Mendez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, and all rest break premium wages earned. As a result, the Rise Wellness Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gutierrez Mendez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gutierrez Mendez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Lisa Gutierrez Mendez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Lisa Gutierrez Mendez

Walter L. Haines, Esq.

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