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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SABRINA DWYER, on behalf of other similarly situated employees of Defendants and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

WINGS RECOVERY CENTER, LLC DBA SERO MENTAL HEALTH and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU037363C

Judge: Evan P. Kirvin
Department: 69

CLASS ACTION

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay All Wages Owed
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
10. Unpaid Reporting Time Wages
11. Unpaid Split Shift Premium Wages
12. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: July 15, 2025

Plaintiff SABRINA DWYER, on behalf of all other similarly situated employees of Defendants and the State of California under the Private Attorneys General Act ("Plaintiff") brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants WINGS RECOVERY CENTER, LLC DBA SERO MENTAL HEALTH and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a class action filed for wage and hour violations of the California Labor Code.

2. Defendants failed to compensate Plaintiff and class members for all hours suffered or permitted to work in violation of the applicable IWC Wage Order.

3. Defendants' underpayment of wages was facilitated by their company-wide practices of requiring off-the-clock work.

4. Defendants also underpaid overtime, paid sick leave, and premiums by failing to properly calculate the regular rate of pay.

5. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members to take compliant meal and rest periods to which they were entitled. Yet, Defendants did not pay all meal and rest period premiums.

6. Defendants failed to pay reporting time wages to Plaintiff and the class members.

7. Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to Plaintiff and the class members.

8. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the class members.

9. Defendants are further liable for derivative claims for wage statements, untimely payment, and other associated violations.

10. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

11. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

12. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

13. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

14. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Sabrina Dwyer

15. Plaintiff Dwyer is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2020 to April 2025. Plaintiff worked as a Client Care Technician and was paid an hourly rate of $27.00.

16. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd*. (Feb. 26, 2025, D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

17. Defendant Wings Recovery Center, LLC dba Sero Mental Health is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

18. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,

each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

19. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

20. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

21. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

22. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in the State of California at any time from four years prior to the filing of this action through date of class certification.

23. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

24. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

25. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

26. Plaintiff and the putative class members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

27. Defendants failed to pay Plaintiff and the putative class members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

28. Specifically, at times Plaintiff and the putative class members were required to work through their unpaid meal periods. As discussed in further detail below, Plaintiff and the putative class members were required to clock out each day to make it appear as if they took a compliant meal period, when in reality they had a shorter/interrupted meal period or no meal period at all. Each time Plaintiff and the class members worked through their unpaid meal periods, this resulted in unpaid off-the-clock work.

29. Defendants failed to pay Plaintiff and the putative class members overtime wages due under California law, including failure to compensate overtime hours at the lawful and correct "regular rate of pay. As a result, Plaintiff and the putative class members have sustained significant unpaid wage damages.

30. First, as mentioned above, Defendants maintained and enforced an unlawful policy and practice of requiring Plaintiff and other putative class members to work through meal breaks without compensating them for the time worked. Specifically, at times, when Plaintiff and class members worked shifts exceeding eight (8) hours in a workday and were not provided duty-free meal periods, they nevertheless continued performing work during what should have been unpaid meal periods. Defendants failed to properly account for this time as compensable overtime, thereby depriving Plaintiff and class members of overtime wages in violation of California Labor Code §§ 510, 1194, and the applicable IWC Wage Orders.

31. Second, Defendants failed to include non-discretionary bonus payments in calculating employees' "regular rate of pay" for overtime compensation purposes. Throughout the relevant time period, Defendants paid Plaintiff and putative class members non-discretionary bonuses, which should have been included in the regular rate calculation when determining overtime wages. However, Defendants unlawfully paid overtime compensation solely at 1.5 times the employees' base hourly

rate, rather than 1.5 times the correct regular rate that would include such additional remuneration, in violation of California Labor Code § 510(a) and applicable IWC Wage Orders.

32. Furthermore, Defendants failed to properly calculate and pay double time compensation at the correct "regular rate of pay." For double time hours worked during periods in which non-discretionary bonuses were earned, Defendants unlawfully compensated Plaintiff and class members at a rate of 2.0 times the base hourly rate, rather than twice the employees' regular rate of pay, as mandated by California Labor Code § 510(a) and IWC Wage Orders.

33. By way of example, during the pay period from November 30, 2024, to December 13, 2024, Plaintiff worked approximately 15.95 hours of overtime and also earned a non-discretionary bonus in the amount of $500.00. Plaintiff's base hourly rate was $27.00 per hour. Nevertheless, Defendants paid Plaintiff overtime at a flat rate of $40.50 (i.e., 1.5 times the base rate), without factoring in the bonus to determine the proper regular rate of pay. As a result, Plaintiff was underpaid for all overtime hours worked during that pay period.

34. By way of example, during the pay period from November 30, 2024, to December 13, 2024, Plaintiff worked approximately 15.95 hours of overtime and also earned a non-discretionary bonus in the amount of $500.00. Plaintiff's base hourly rate was $27.00 per hour. Nevertheless, Defendants paid Plaintiff overtime at a flat rate of $40.50 (i.e., 1.5 times the base rate), without factoring in the bonus to determine the proper regular rate of pay. As a result, Plaintiff was underpaid for all overtime hours worked during that pay period.

35. Defendants failed to comply with California's paid sick leave laws with respect to the class members as set forth under Labor Code §§ 246, 246.5, 248.5, and applicable wage orders,.

36. Specifically, due to Defendants' unlawful policy and practice of requiring Plaintiff and class members to work off-the-clock and/or through meal and rest breaks without proper compensation, Defendants failed to accurately track total hours worked, which directly impacted the proper accrual and availability of paid sick leave. As a result, Plaintiff and class members were systematically denied full and accurate accrual of paid sick leave benefits to which they were legally entitled.

37. Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to the class members.

38. Specifically, Defendants, at times, required Plaintiff and the putative class members to report to work outside of their regular schedules to attend mandatory client care meetings. These meetings often lasted as little as 30 minutes and consistently less than two hours. After attending such meetings, Plaintiff and class members were frequently sent home without additional work or were assigned shifts substantially shorter than half of their normally scheduled shifts. For example, Plaintiff's timecard reflects that on or about November 26, 2023, she was scheduled to work only 30 minutes after being called in for a client care meeting. On information and belief, at times, class members experienced similar scheduling practices. Despite reporting for work as instructed, Plaintiff and class members were not compensated with reporting time pay as required by applicable IWC Wage Orders, which mandate payment of "the greater of two hours or half the scheduled day's work" when an employee is required to report to work but is furnished with less than half of their usual or scheduled day's work.

39. Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to the class members. As part of this practice, Defendants scheduled Plaintiff and others to complete client care meetings earlier in the day—often well before their regularly scheduled shifts—resulting in extended unpaid breaks between work periods. These gaps, often exceeding two hours, created qualifying "split shifts" under IWC Wage Order No. 4. Despite this, Defendants failed to pay any required split shift premiums. As reflected in Plaintiff's time records, Plaintiff was required to do a client care meeting from 10:09 a.m. to 10:31 a.m. and did not begin her regular shift until 12:38 p.m. Plaintiff was scheduled to work a split shift every day. However, Plaintiff was not paid any split shift premiums despite Defendant establishing a work schedule that was interrupted by non-paid, non-working periods of over two hours.

40. Defendants failed to provide compliant meal periods to Plaintiff and the class members.

41. Plaintiff and the putative class members, from time to time, experienced missed, short, late, and interrupted meal periods in order to keep up with high demands of the job and as a result of understaffing. For example, Plaintiff was expected to keep up with critical tasks supporting

intervention with clients, assisting them in keeping up with household chores and cleaning and maintaining the facility which as a result of understaffing prevented her from being able to take a compliant meal break. On information and belief, Defendants had the same practice with other class members. Plaintiff and the class members were required to work during their uncompensated meal periods to complete tasks in a timely matter which had there been proper staffing would not have been urgent. Meal periods were therefore regularly conducted "on duty" however, Defendants failed to provide a valid on duty meal period agreement.

42. Defendants required Plaintiff and the class members to sign an On-Duty Meal Period Agreement. This waiver was unlawful because the nature of Plaintiff's work was not that which required "an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to" as required by the Labor Code and Wage Orders. Indeed, sufficient staffing would have allowed Plaintiff and class members to take compliant breaks. As such, Defendants are liable for both wages and meal period premiums for any on-duty meal period taken by an aggrieved employee.

43. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other class members a meal period premium in violation of Labor Code section 226.7 for all violations.

44. In particular, Plaintiff alleges that Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other putative class members to falsify time records by inserting meal periods that were not actually taken or that were shorter than 30 minutes, interrupted, or otherwise non-compliant. Each time Plaintiff and class members were forced to record a 30-minute meal period despite receiving no such break—or receiving a shortened or interrupted meal period—they became entitled to a premium payment under California law. Defendants, however, failed to pay such premiums, or failed to pay them accurately.

45. Further, to the extent that Defendants did pay meal period premiums, Plaintiff is informed and believes, and on that basis alleges, that such payments were unlawfully calculated based only on the employee's base hourly rate, without factoring in non-discretionary compensation such as bonuses. This constitutes a further violation of California Labor Code § 226.7 and governing authority,

which require meal period premiums to be paid at the employee's "regular rate of pay," not merely the base hourly rate.

46. By way of example, during the pay period from November 30, 2024, to December 13, 2024, Plaintiff earned a non-discretionary bonus of $500.00 and received meal period premium payments for two (2) hours. However, Defendants calculated and paid those premiums at Plaintiff's base rate of $27.00 per hour, rather than at her proper regular rate of pay, which should have included the additional $500.00 in remuneration. This underpayment reflects a systemic failure to comply with Labor Code § 226.7 and related wage and hour requirements.

47. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

48. Plaintiff and the class members often experienced missed, short, late, and interrupted rest periods for the same reasons stated above. To the extent that Plaintiff was able to take a break in between client services, these rest periods were not duty-free; therefore, non-compliant because Plaintiff was required to work despite being on break to attend client concerns and assist their team members if a client issue arose. Due to the high demands of the job, Plaintiff and the class members were not always authorized or permitted to take all their rest periods.

49. When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other class members a rest period premium in violation of Labor Code section 226.7. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to class members, which would have factored in commissions, bonuses, and other forms of remuneration.

50. These violations create derivative liability for failure to timely pay all wages owed each payday or upon separation of employment.

51. Defendants failed to provide accurate itemized wage statements to the class members each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

52. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

53. Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time plaintiff and other class members worked due to Defendants' policy and practice of requiring off-the-clock work.

54. Plaintiff and other class members cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other class members with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

55. Because of these policies and practices set forth above, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED

Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

56. All outside paragraphs of this Complaint are incorporated into this section.

57. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that "'wages'

includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

58. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

59. Defendants' unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2, 218.6 and any other applicable statutes.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

60. All outside paragraphs of this Complaint are incorporated into this section.

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

62. Defendants failed in their affirmative obligation to pay Plaintiff and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours

over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

63. Plaintiff and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

64. All outside paragraphs of this Complaint are incorporated into this section.

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

66. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

67. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

68. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

69. All outside paragraphs of this Complaint are incorporated into this section.

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

71. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

73. All outside paragraphs of this Complaint are incorporated into this section.

74. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq*. Paid sick leave earnings constitute wages for purposes of California wage and hour law.

(*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

75. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.,* 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class members, govern how Defendants were required to calculate paid sick leave.

76. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

77. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

78. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

79. All outside paragraphs of this Complaint are incorporated into this section.

80. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

81. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for

employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

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

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

83. All outside paragraphs of this Complaint are incorporated into this section.

84. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

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

86. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

87. As a result, Plaintiff and class members are entitled to recover the statutory penalty of $50 per employee for the initial pay period in which a violation occurred and $100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of $4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

<u>EIGHTH CAUSE OF ACTION</u>

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq*.

88. All outside paragraphs of this Complaint are incorporated into this section.

89. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

90. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

91. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

<u>NINTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

92. All outside paragraphs of this Complaint are incorporated into this section.

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

94. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance

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

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

96. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

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

TENTH CAUSE OF ACTION

UNPAID REPORTING TIME WAGES

Violation of Labor Code § 1198

97. All outside paragraphs of this Complaint are incorporated into this section.

98. Defendants violated Labor Code sections 1198 and Section 5 (Reporting Time Pay) of the applicable IWC Wage Orders concerning reporting time wages with respect to the aggrieved employees.

99. Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length.

100. Section 5 further requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length.

101. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions of the IWC Wage Orders.

102. As described above, Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to class members when they were sent home after completing less than half of their scheduled shifts. Thus, Defendants are liable to the class for all unpaid reporting time wages, and associated penalties, interests, fees, and costs.

ELEVENTH CAUSE OF ACTION

UNPAID SPLIT SHIFT PREMIUM WAGES

Violation of Labor Code § 1198

103. All outside paragraphs of this Complaint are incorporated into this section.

104. Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the class.

105. Section 4(C) of the applicable IWC Wage Orders requires that when "an employee works a split shift" the employer must pay one additional hour's pay at the minimum wage "in addition to the minimum wage for that workday." According to the IWC Wage Orders' definition sections, a "split shift" is defined as a work schedule that is "interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods

106. Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

107. As described above, Defendants maintained an unlawful policy and practice of failing to pay split shift premiums owed to Plaintiff and the class members. As such, Defendants are liable to the class for all unpaid premiums, and associated penalties, interests, fees, and costs.

<u>TWELFTH CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

108. All outside paragraphs of this Complaint are incorporated into this section.

109. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("<u>PAGA</u>"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

110. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

111. The State of California, via the Labor and Workforce Development Agency ("<u>LWDA</u>"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

112. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3. "

113. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

114. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

115. On or about **June 13, 2025**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

116. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

117. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

118. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

119. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

120. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

d. ***Unpaid Split Shift Premium Wages.*** Violation of Labor Code § 1198; IWC Wage Orders.

e. ***Unpaid Reporting Time Wages.*** Violation of Labor Code § 1198; IWC Wage Orders.

f. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

g. Unpaid Rest Period Premium Wages. Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

h. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

i. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

j. Non-Compliant Wage Statements. Violation of Labor Code §§ 226, 226.3.

k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

121. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiff as the class representative;

c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of all statutory penalties and liquidated damages;

f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;

g. For restitution and injunctive relief;

h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5.;

i. For recovery of damages in amount according to proof;

j. For all recoverable pre- and post-judgment interest;

k. For this action to be maintained as a representative action under the PAGA;

l. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

m. For recovery of all civil penalties and other recoverable amounts under the PAGA;

n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

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

Dated: August 18, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Dorota A. James
Attorneys for Plaintiff Sabrina Dwyer

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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June 13, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq*.

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Wings Recovery Center, LLC aka Sero Mental Health
785 Grand Ave., Ste. 101
Carlsbad, California 92008

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SABRINA DWYER** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

WINGS RECOVERY CENTER, LLC aka SERO MENTAL HEALTH

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Client Care Technician from about June 2020, to April 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

<u>Unpaid Hours Worked/Minimum Wage</u>
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 1194</u> renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. <u>Labor Code section 1197</u> further mandates

that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Plaintiff and the aggrieved employees were regularly required to work through their unpaid meal periods. As discussed in further detail in the "Unpaid Meal Period Premium Wages" section below, Plaintiff and the aggrieved employees were required to clock out each day to make it appear as if they took a compliant meal period, when in reality they had a shorter/interrupted meal period or no meal period at all. Each time Plaintiff and the aggrieved employees worked through their unpaid meal periods, this resulted in unpaid off-the-clock work.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny 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;" and "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;" and "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." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as mentioned above, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work off-the-clock. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Second, Defendants failed to pay overtime at the "regular rate of pay." Specifically, Defendants paid Plaintiff and aggrieved employees bonuses that Defendants failed to include in the overtime rates in the pay periods when employees worked overtime hours. Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime "at a rate no less than **one and one-half times the regular rate of pay** for an employee" as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. Furthermore, Defendants unlawfully paid double time to Plaintiff and the aggrieved employees at 2x their straight hourly rate. For each double hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay double-time "at the rate of no less than **twice the regular rate of pay of an employee**." as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example is shown below:

Pay Summary: **2024 - 51 - 1**

This summary is a record of a payment issued and not an image of the actual pay statement.

Wings Recovery Center
785 Grand Ave
Suite 101
Carlsbad, CA 92008

Sabrina Dwyer
[redacted]

Period Beginning Date	Pay Date	Co.	Clock	Home Dept
11/30/2024	12/20/2024	6CN		113000
Period Ending Date	**WGPS Advance Pay Date**	**File #**	**Number**	**Worked In Dept**
12/13/2024		000065	00510017	113000

Gross Pay			$ 3,697.75
Regular	Rate: 27.0000	Hours: 74.75	$ 2,018.25
Overtime	Rate: 40.5000	Hours: 15.95	$ 645.98
Bonus (field 3)			$ 500.00
MEAL (field 3)	Rate: 27.0000	Hours: 2.00	$ 54.00
DOUBLETIME (field 3)	Rate: 54.0000	Hours: 8.88	$ 479.52

Total Hours Worked: 99.58

Basis of Pay: HOURLY

Extract from Plaintiff's wage statement for pay period 11/30/2024 to 12/13/2024 showing pay for overtime at a rate of $40.50 and double-time at a rate of $54.00

Here Plaintiff worked approximately 15.95 hours of overtime in the same pay period that she earned a bonus payment of $500.00. However, Defendants failed to factor in this additional renumeration into Plaintiff's overtime rates, instead paying deficient rates of 1.5x Plaintiff's base rate of $27.00. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

Additionally, Plaintiff worked approximately 8.88 hours of double-time in the same period that she earned a bonus payment of $500.00. However, Defendants failed to factor in this additional renumeration into Plaintiff's double time rates, instead paying deficient rates of 2x Plaintiff's base rate of $27.00. Defendants failed to pay Plaintiff and the aggrieved employees double time wages and the lawful rate of pay for double time hours worked, resulting in unpaid double time wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Due to Defendants' unlawful policy of requiring Plaintiff and the aggrieved employees to work off-the-clock, Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Consequently, Plaintiff and the aggrieved employees were systematically denied all owed paid sick leave hours.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Reporting Time Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 5 (Reporting Time Pay) of the applicable IWC Wage Orders concerning reporting time wages with respect to the aggrieved employees.

Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5 further requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to the aggrieved employees.

Specifically, Plaintiff and the aggrieved employees were often made to report to work outside of their regular schedule to complete client care meetings, at times these meetings would last as little as 30 minutes and were consistently less than 2 hours. Following these meetings, Plaintiff and the aggrieved employees were often either given no more work for the day or made to work shifts that were less than half their usual shift. An illustrative example is shown below:

P	Sun	11/26/2023	11:30 AM - 12:00 PM		0.50	113000
P	Mon	11/27/2023	08:46 AM - 10:29 AM		1.72	113000
P	Mon	11/27/2023	12:02 PM - 03:31 PM	LP	3.48	113000
P	Mon	11/27/2023	04:02 PM - 05:15 PM	LP	1.22	113000
P	Mon	11/27/2023	06:00 PM - 09:12 PM		3.20	113000
P	Tue	11/28/2023	09:54 AM - 11:00 AM		1.10	113000
P	Tue	11/28/2023	12:34 PM - 03:29 PM	LP	2.92	113000
P	Tue	11/28/2023	04:01 PM - 09:07 PM		5.10	113000
P	Wed	11/29/2023	11:59 AM - 03:33 PM	LP	4.57	113000

Extract of Plaintiff's timecard showing that Plaintiff was scheduled for only 30 minutes on 11/26/23 when she was called in for a client care meeting.

Plaintiff and, on information and belief, the aggrieved employees were not compensated reporting time wages in the amount of "the greater of two hours or half the scheduled shift length" as required by the Labor Code.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Split Shift Premium Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the aggrieved employees.

Section 4(C) of the applicable IWC Wage Orders requires that when "an employee works a split shift" the employer must pay one additional hour's pay at the minimum wage "in addition to the minimum wage for that workday." According to the IWC Wage Orders' definition sections, a "split shift" is defined as a work schedule that is "interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods." Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to the aggrieved employees. As illustrated below, Defendant scheduled Plaintiff and aggrieved employees to complete client care meetings before beginning her regular scheduled shifts, there would be up to over two hours between these meetings ending and her regularly scheduled work beginning resulting in split shifts. Yet, Defendant did not pay Plaintiff and aggrieved employees any split shift premiums. An illustrative example is shown below:

P	Tue	01/23/2024	10:09 AM - 10:31 AM		0.37	113000
P	Tue	01/23/2024	12:38 PM - 04:13 PM	LP	3.58	113000
P	Tue	01/23/2024	04:44 PM - 09:06 PM		4.37	113000

Extract of Plaintiff's timecard showing that Plaintiff was scheduled for split shifts on workdays when she was called in for client care meetings.

As reflected in Plaintiff's time records above, Plaintiff was required to do a client care meeting from 10:09 a.m. to 10:31 a.m. and did not begin her regular shift until 12:38 p.m. Plaintiff was scheduled to work a split shift every day. However, Plaintiff was not paid any split shift premiums despite Defendant establishing a work schedule that was interrupted by non-paid, non-working periods of over two hours.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages

Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted meal periods in order to keep up with high demands of the job and as a result of understaffing. For example, Plaintiff was expected to keep up with critical tasks supporting intervention with clients, assisting them in keeping up with household chores and cleaning and maintaining the facility which as a result of understaffing prevented her from being able to take a compliant meal break. On information and belief, Defendants had the same practice with other aggrieved employees. Plaintiff and the aggrieved employees were required to work during their uncompensated meal periods to complete tasks in a timely matter which had there been proper staffing would not have been urgent. Meal periods were therefore regularly conducted "on duty" however, Defendants failed to provide a valid on duty meal period agreement.

Defendants required Plaintiff and the aggrieved employees to sign an On-Duty Meal Period Agreement. This waiver was unlawful because the nature of Plaintiff's work was not that which required "an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to" as required by the Labor Code and Wage Orders. Indeed, sufficient staffing would have allowed Plaintiff and aggrieved employees to take compliant breaks. As such, Defendants are liable for both wages and meal period premiums for any on-duty meal period taken by an aggrieved employee. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7 for all violations.

Additionally, as discussed above, Defendants engaged in the unlawful policy and practice of having Plaintiff and the aggrieved employees' insert false meal periods. Each time Plaintiffs were made to make it appear as though they had taken a 30-minute meal period when in reality they had a shorter/interrupted meal period or no meal period at all, they were owed a meal period premium.

Further, to the extent Defendants paid meal period premiums in the same pay period that the aggrieved employees earned bonuses or other forms of non-excludable remuneration, Plaintiff believes and alleges that Defendants underpaid these premiums by failing to factor in all forms of non-discretionary income into the regular rate of pay.

Pay Summary: **2024 - 51 - 1**

This summary is a record of a payment issued and not an image of the actual pay statement.

Wings Recovery Center
785 Grand Ave
Suite 101
Carlsbad, CA 92008

Sabrina Dwyer
[redacted]

Period Beginning Date	**Pay Date**	**Co.**	**Clock**	**Home Dept**
11/30/2024	12/20/2024	6CN		113000
Period Ending Date	**WGPS Advance Pay Date**	**File #**	**Number**	**Worked In Dept**
12/13/2024		000065	00510017	113000

Gross Pay			$ 3,697.75
Regular	Rate: 27.0000	Hours: 74.75	$ 2,018.25
Overtime	Rate: 40.5000	Hours: 15.95	$ 645.98
Bonus (field 3)			$ 500.00
MEAL (field 3)	Rate: 27.0000	Hours: 2.00	$ 54.00
DOUBLETIME (field 3)	Rate: 54.0000	Hours: 8.88	$ 479.52

Total Hours Worked: 99.58

Basis of Pay: HOURLY

Extract from Plaintiff's wage statement for pay period 11/30/2024 to 12/13/2024 showing pay for meal violations at a rate of $27.00

Here Plaintiff was paid a meal premium for 2 hours at her base rate of $27.00. However, Defendants failed to factor in the additional renumeration into Plaintiff's regular rate of pay for meal premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted rest periods for the same reasons stated in the "Unpaid Meal Period Premium Wages" section. To the extent that Plaintiff was able to take a break in between client services, these rest periods were not duty-free; therefore, non-compliant because Plaintiff was required to work despite being on break to attend client concerns and assist their team members if a client issue arose. Due to the high demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods.

When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section

226.7. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in commissions, bonuses, and other forms of remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendants' policy and practice of requiring off-the-clock work.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Failure to Maintain Accurate Records</u>
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

<u>Labor Code section 1174</u> requires that employers maintain accurate "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." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Dorota James

Dorota A. James

Cc Plaintiff Sabrina Dwyer

Bri Romo – Chief Human Resources Officer
bromo@galenmentalhealth.com

jg