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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By D. Saenz, Deputy Clerk

Attorneys for Plaintiff FERNANDO MARTINEZ, as a designated Private Attorney General,
pursuant to the Private Attorney General Act

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

FERNANDO MARTINEZ, as a
designated Private Attorney General,
pursuant to the Private Attorney General
Act,

Plaintiff,

v.

LM OPERATIONS DBA WESTMONT
LIVING LA MESA; and DOES 1
through 50, inclusive,

Defendant.

Case No.: 26CU007013C

COMPLAINT FOR CIVIL PENALTIES

1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime);
2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods);
3. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods);
4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statement);
5. Violation of the Private Attorneys' General Act, Labor Code §§ 201–203 (Failure to Pay Wages Due at Separation of Employment); and
6. Violation of the Private Attorneys' General Act, Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses)

1 Plaintiff FERNANDO MARTINEZ (“Plaintiff”) on behalf of the State of California,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of California as a Private Attorney General
5 pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code §2698 et
6 seq. as a result of one or more of the violations of the California Labor Code alleged herein by
7 Defendant LM OPERATIONS DBA WESTMONT LIVING LA MESA (“Defendant”). The term
8 “RELEVANT TIME PERIOD” or “TIME PERIOD” is defined as one (1) year plus sixty-five
9 (65) days prior to the filing of the complaint. Plaintiff as a Private Attorney General reserves the
10 right to amend this complaint to reflect a different “Time Period” as further discovery is
11 conducted.

12 2. Plaintiff, on behalf of the State of California as a Private Attorney General, seeks
13 relief against Defendant for (1) failing to pay Plaintiff and Aggrieved Employees for all hours
14 worked; (2) failing to provide Plaintiff and Aggrieved Employees with meal periods or premium
15 compensation in lieu thereof; (3) failing to provide Plaintiff and Aggrieved Employees with rest
16 periods or premium compensation in lieu thereof; (4) failing to provide Plaintiff and Aggrieved
17 Employees with accurate itemized wage statements; (5) failing to pay Plaintiff and Aggrieved
18 Employees all wages earned and owed at separation of employment; and (6) failing to reimburse
19 Plaintiff and Aggrieved Employees for all necessary expenditures and losses incurred in
20 furtherance of their job duties.

21 3. At all relevant times herein, Defendant has consistently maintained and enforced
22 the following unlawful policies and practices against Plaintiff:

- 23 a. Willfully refusing to pay all hours worked, including both regular and overtime
24 wages;
- 25 b. Willfully refusing to permit timely off-duty meal periods or providing
26 compensation in lieu thereof
- 27 c. Willfully refusing to permit rest periods or providing compensation in lieu
28 thereof;

- 1 d. Willfully refusing to furnish accurate itemized wage statements upon payment
2 of wages;
3 e. Willfully refusing to pay all wages due upon separation of employment; and
4 f. Willfully refusing to reimburse necessary business expenses.

5 **JURISDICTION AND VENUE**

6 4. This Court has subject matter jurisdiction over the causes of action alleged in this
7 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
8 excluded from exercising subject matter jurisdiction over said causes of action.

9 5. Venue is proper in the County of San Diego because Defendant, LM
10 OPERATIONS DBA WESTMONT LIVING LA MESA, transacts business in this county, the
11 obligations and liability arise in this county, and work performed by Plaintiff that forms the
12 subject of this action occurred in this county.

13 6. The California Superior Court has jurisdiction in the matter, because of the
14 individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional
15 threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident
16 of and/or domiciled in the County of San Diego, State of California. Defendant is a California
17 corporation doing business in the State of California, County of San Diego.

18 7. Further, there is no federal question at issue as the issues herein are based solely on
19 California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
20 Professions Code, and California Rules of Court.

21 **THE PARTIES**

22 **Plaintiff**

23 8. Plaintiff began employment with Defendant on or around September 18, 2024,
24 through on or about February 21, 2025, as a maintenance worker, with duties including painting
25 rooms, responding to work orders around the premises, and completing reparations on damaged
26 or faulty amenities (broken lights/faulty doors/leaky sinks) throughout the premises. Throughout
27 the Relevant Time Period, Plaintiff worked for Defendant within the County of San Diego.
28 Plaintiff was deemed a non-exempt hourly employee by Defendant. Plaintiff is accordingly

1 entitled to compensation for all hours worked, overtime compensation, and penalties from
2 Defendant.

3 **Defendant**

4 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
5 California Limited Partnership operating assisted senior living communities throughout
6 California, including San Diego County California, and was the employer of the Plaintiff and
7 similarly situated employees during the Relevant Time Period.

8 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
9 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
10 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
11 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
12 capacities of the DOE Defendants when ascertained.

13 11. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted
14 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
16 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
17 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
18 are alter egos, joint employers and conspire with one another to increase profits by engaging in
19 the conduct described in this complaint.

20 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
21 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
22 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
23 below was acting, at least in part, within the course and scope of that authority as such agent,
24 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
25 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
26 are legally attributable to the other Defendants.

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PAGA ADMINISTRATIVE PREREQUISITE

13. Plaintiff brings this case as a Private Attorney General pursuant to the Private Attorney General Act (2004) seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee that was employed by Defendant and did not receive all wages due, was not paid minimum wages, was not paid overtime, was not provided with accurate wage statements, was not reimbursed for necessary expenditures, and was not able to take lawful meal and rest breaks or receive premium compensation in lieu thereof.

15. More than sixty-five (65) days have passed since Plaintiff submitted the June 5, 2025, notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to the June 5, 2025 PAGA notice.

16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its employees wages due under California's wage and hour laws for work performed in California. Defendant wrongfully refused to pay Plaintiff and Aggrieved Employees regular wages, overtime compensation, meal and rest break premiums, and other statutory benefits mandated by California.

twice that of the state minimum wage and remain under Defendant's direct control and supervision. Accordingly, these positions remain non-exempt from California's wage and hour laws yet Defendant fails to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-exempt employees, as required by law.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common within the State of California.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for all hours worked, including minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned wages by failing to compensate Plaintiff and Aggrieved Employees the mandatory minimum wage. Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite overtime and double-time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.

20. Plaintiff alleges that Defendant failed to compensate Plaintiff and Aggrieved Employees at the legally mandated wage rates for all hours worked. Specifically, Defendants failed to compensated Plaintiff and Aggrieved Employees for work performed during meal and rest breaks.

21. Defendant also maintained a policy and practice of requiring Plaintiff and Aggrieved Employees to clock-out for their breaks and continue working. Defendant would then clock Plaintiff and Aggrieved Employees back in, regardless of if they were able to take their full break.

22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half (1 ½) times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day were required to be compensated at a rate of two times the employee's base rate of pay. Defendant's failure to pay Plaintiff and Aggrieved Employees the legally mandated overtime

1 wage also violated the Labor Code.

2 23. Defendant also required Plaintiff and Aggrieved Employees to frequently work
3 shifts in excess of eight (8) but refused to pay Plaintiff and Aggrieved Employees the applicable
4 overtime rate. Defendant maintained a policy and practice of requiring Plaintiff and Aggrieved
5 Employees to work on days they were not scheduled and compensated them in a cash amount that
6 was below the legally mandated minimum and overtime wage.

7 24. Defendant failed to compensate Plaintiff and Aggrieved Employees at the legally
8 mandated wage rates for all hours worked. Specifically, Defendant failed to implement meal and
9 rest break policies and prioritized work responsibilities over providing requisite meal and rest
10 breaks to Plaintiff and Aggrieved Employees.

11 25. Defendant also maintained a policy and practice of requiring Plaintiff and
12 Aggrieved Employees to clock-out for their breaks and continue working. Defendant failed to
13 schedule Plaintiff and Aggrieved Employees in a manner that ensured the proper provision of
14 meal and rest periods. Plaintiff and Aggrieved Employees' meal and rest periods were often
15 interrupted or cut short by work duties, and at times they were required to forego meal and rest
16 periods altogether.

17 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
19 wage statements that accurately showed their actual hours worked, total hours worked, number
20 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per
21 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
22 Aggrieved Employees were not provided with accurate itemized wage statements showing their
23 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
24 total hours worked per pay period.

25 27. By failing to include on Plaintiff and Aggrieved Employees' paystubs all
26 minimum wage and overtime and double-time owed, Defendant failed to keep accurate payroll
27 records and failed to provide Plaintiff and Aggrieved Employees with complete and accurate
28 wage statements.

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

29. Defendant also maintained a policy of controlling the appearance of Plaintiff and Aggrieved Employees by requiring a uniform during their shifts, marked with Defendant's company logo. Additionally, Defendant required Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse its employees for necessary business expenditures, specifically requiring employees to utilize their personal cell phones in direct consequence of the discharge of their duties to Defendant.

FIRST CAUSE OF ACTION

Failure to Pay All Wages Owed, Including Minimum Wage and Overtime

(Plaintiff as a Private Attorney General Against Defendant)

30. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

31. Labor Code section 1182.12 provides that on and after January 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. From January 1, 2018 to December 31, 2018, the applicable minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January 1, 2019 to December 31, 2019, the applicable minimum wage rate in California was eleven dollars (\$11.00) per hour. From January 1, 2020, through December 31, 2020, the applicable minimum wage rate in California was twelve dollars (\$12.00) per hour. From January 1, 2021, through December 31, 2021, the applicable minimum wage rate in California was thirteen dollars (\$13.00) per hour. From January 1, 2022, through December 31, 2022, the applicable minimum wage rate in California was fourteen dollars (\$14.00) per hour. As of January 1, 2023 the applicable minimum wage rate in California is fifteen dollars (\$15.00) per hour.

32. Additionally, many California cities and counties impose a separate minimum

1 wage higher than that set by section 1182.12, which may be applicable to Plaintiff and Aggrieved
2 Employees.

3 33. Notwithstanding any other provision of the Labor Code, hourly minimum wage
4 rates are set for all industries according to statute. (Lab. Code § 1182.12). Employers must pay
5 employees no less than minimum wage for each hour worked. (Lab. Code § 1194; IWC Wage
6 Order 1-2001, Sect. 4.)

7 34. Any work in excess of eight hours in any workday and any work in excess of 40
8 hours in a workweek shall be compensated at a rate of no less than one and one-half times the
9 regular rate of pay for an employee. (Lab. Code § 510, subd. (a); IWC Wage Order 1-2001, Sect.
10 3(A)). Any work in excess of 12 hours in a workday shall be compensated at the rate of twice the
11 regular rate of pay for an employee. (*Ibid.*)

12 35. Any employee receiving less than the legal minimum wage or legal overtime
13 compensation is entitled to recover in a civil action the amount of unpaid wages and interests
14 thereon, attorneys' fees, and costs of suit. (Lab. Code § 1194, subd. (a)).

15 36. All wages earned in employment are due and payable twice during each calendar
16 month on dates designated in advance by the employer. (Lab. Code § 204).

17 37. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
18 and forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees all
19 minimum wage, overtime premiums, and/or double-time premiums for all hours worked in excess
20 of eight (8) hours per day and/or forty (40) hours per week for work performed for Defendants.

21 38. Defendant maintained a policy and practice of requiring Plaintiff and Aggrieved
22 Employees to clock-out for their breaks and continue working. Defendant would then clock
23 Plaintiff and Aggrieved Employees back in, regardless of if they were able to take their full break.

24 39. Defendant also maintained a policy and practice of requiring Plaintiff and
25 Aggrieved Employees to work on days they were not scheduled and compensated them in a cash
26 amount that was below the legally mandated minimum and overtime wage.

27 40. Defendant regularly required Plaintiff and Aggrieved Employees to perform work
28 off-the-clock after their shifts had ended as a matter of expectation and requirement. Specifically,

1 Defendant instructed Plaintiff and Aggrieved Employees to clock out despite having to continue
2 to work, including performing closing tasks, maintenance reparations, and other facility duties.
3 This resulted in a failure to compensate employees for all time actually worked, thereby causing
4 Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40)
5 hours per week without receiving the legally mandated minimum wage or overtime premiums.

6 41. Plaintiff and Aggrieved Employees are entitled to penalties, attorneys' fees, and
7 costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Provide Meal Periods or Premium Compensation in Lieu thereof**

10 **(Plaintiff as a Private Attorney General against Defendant)**

11 42. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
12 fully set forth herein.

13 43. Labor Code sections 226.7 and 512 and IWC Wage Order 1-2001, Sect. 11 provide
14 that no employer shall employ any person for a work period of more than five (5) hours without
15 providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or
16 employ any person for a work period of more than ten (10) hours without a second meal period
17 of not less than thirty (30) minutes.

18 44. Labor Code section 226.7 provides that if an employer fails to provide an
19 employee a meal period in accordance with this section, the employer shall pay the employee one
20 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
21 period is not provided in accordance with this section. Plaintiff alleges Defendants failed to
22 provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or
23 not relieving employees from all work duties during meal periods thereby preventing employees
24 from taking legally compliant meal periods. Specifically, Defendant maintained a policy and
25 practice of requiring Plaintiff and Aggrieved Employees to clock-out for their breaks and continue
26 working. Defendant would then clock Plaintiff and Aggrieved Employees back in, regardless of
27 if they were able to take their full meal and/or rest break.

28 45. At all relevant times, Plaintiff and Aggrieved Employees have worked shifts of

1 more than five (5) hours in a workday.

2 46. Pursuant to Labor Code section 226.7, Plaintiff and Aggrieved Employees are
3 entitled to damages equal to one (1) hour of wages at their regular rate of pay for each missed
4 meal break, in an amount according to proof.

5 47. At varying times relevant hereto, Plaintiff and Aggrieved Employees have worked
6 shifts of more than ten (10) hours in a workday.

7 48. Plaintiff and Aggrieved Employees are entitled to penalties, attorneys' fees, and
8 costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof**

11 **(Plaintiff as a Private Attorney General against Defendant)**

12 49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
13 fully set forth herein.

14 50. Labor Code section 226.7 provides that employers authorize and permit all
15 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
16 major fraction thereof.

17 51. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
18 provide and employee rest periods in accordance with this section, the employer shall pay the
19 employee one (1) hour of pay at the employees' regular rate of compensation for each workday
20 that the rest period is not provided. Plaintiff and Aggrieved Employees consistently worked over
21 four (4) hours per shift with no rest breaks, due to Defendants' uniform policies and practices.

22 52. Defendants failed to reasonably make available rest breaks to Plaintiff and
23 Aggrieved Employees during the Relevant Time Period.

24 53. Plaintiff and Aggrieved Employees are entitled to penalties, attorneys' fees, and
25 costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements and Maintain Records**

3 **(Plaintiff as a Private Attorney General against Defendant)**

4 54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
5 fully set forth herein.

6 55. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
7 Orders, provide that employers must keep records and provide employees with itemized wage
8 statements showing all hours worked and each applicable rate of pay in effect during the pay
9 period with the corresponding number of hours worked at each hourly rate.

10 56. Labor Code section 1174, subdivision (d) requires employers to keep at a central
11 location in California or at the plant or establishment at which the employees are employed,
12 payroll records showing the hours worked daily, and the wages paid to, each employee.

13 57. Labor Code section 226, subdivision (a) requires employers to provide employees
14 – either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
15 separately when wages are paid by personal check or cash – an accurate itemized wage statement
16 in writing including specified information, including but not limited to: (1) gross wages earned;
17 (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all
18 deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
19 paid; (7) the name of the employee and only the last four digits of his or her social security number
20 or an employee identification number other than a social security number; (8) the name and
21 address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect
22 during the pay period and corresponding number of hours worked at each hourly rate by the
23 employee...”

24 58. Labor Code section 226, subdivision (e) provides that if an employer knowingly
25 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
26 the total hours worked by the employee and the applicable hourly overtime rates, causing the
27 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
28 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent

1 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
2 Defendants willfully failed to make or keep accurate records for Plaintiff and Aggrieved
3 Employees.

4 59. IWC Wage Orders require that every employer shall keep accurate information
5 with respect to each employee, including time records showing when each employee begins and
6 ends each work periods, the total daily hours worked by each employee and the total hours worked
7 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
8 Defendants willfully and intentionally failed to make and/or keep records which accurately reflect
9 the hours worked by Plaintiff and Aggrieved Employees. Specifically, Plaintiff believes that
10 Defendants did not maintain records for Plaintiff and Aggrieved Employees reflecting their time
11 actually worked and applicable rate of pay.

12 60. An employee is deemed to suffer injury if the employer fails to provide a wage
13 statement containing all of the required information set forth in Labor Code section 226,
14 subdivision (a). (Lab. Code § 226, subd. (e)(2).) In particular, Defendants failed to keep accurate
15 wage statements by improperly deducting meal and/or rest periods, paying Plaintiff and
16 Aggrieved Employees in cash, and failing to record all hours worked.

17 61. Defendant's policy resulted in Defendant failing to keep accurate records showing
18 all hours Plaintiff and Aggrieved Employees worked, Defendants' failure is in violation of Labor
19 Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage Orders.

20 62. For each employee suffering an injury as a result of Defendants' knowing and
21 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
22 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
23 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
24 subsequent pay period.

25 63. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll
26 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
27 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
28 Code section 2699, subdivision (f)(2). Plaintiffs and Aggrieved Employees are entitled to

1 penalties of \$100.00 for the initial violation, and \$200.00 for each subsequent violation for every
2 pay period during which these records and information were not kept by Defendants.

3 64. Plaintiff and Aggrieved Employees are entitled to penalties, attorneys' fees, and
4 costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Pay Wages Due upon Termination of Employment**

7 **(Plaintiff as a Private Attorney General against Defendant)**

8 65. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
9 fully set forth herein.

10 66. Plaintiff is informed and believes, and based thereon alleges, that as part of
11 Defendants' ongoing unfair business practices, Defendants failed to pay all employees all wages
12 earned during their employment at the time of their separation in violation of Labor Code sections
13 201, 202, and 203.

14 67. Labor Code section 201 provides that employers are required to pay an employee
15 whose employment is terminated by the employer all wages earned throughout their employment
16 and unpaid immediately upon termination.

17 68. Labor Code section 202 requires employers to pay an employee who quits his or
18 her employment all wages earned and unpaid no later than 72 hours thereafter.

19 69. Labor Code section 203 provides that when an employer who fails to pay all wages
20 earned and due to an employee who is discharged or quits within the appropriate timeframes set
21 forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the
22 employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up
23 to 30 days.

24 70. Plaintiff and Aggrieved Employees are entitled to penalties, attorneys' fees, and
25 costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Reimburse Necessary Business Expenses**

3 **(Plaintiff as a Private Attorney General against Defendant)**

4 71. Plaintiff realleges and incorporates by reference the allegations in the preceding
5 paragraphs.

6 72. Labor Code section 2802 states that "An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties..."

9 73. Defendant failed to reimburse its employees for necessary expenditures as a direct
10 consequence of the discharge of their duties.

11 74. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
12 doing business on its employees in violation of the California Labor Code.

13 75. Defendant has a corporate practice and policy of controlling Plaintiff and
14 Aggrieved Employees' appearance by requiring a uniform during their shifts, marked with the
15 Defendant's company logo. Additionally, Defendant required Plaintiff and Aggrieved Employees
16 to shoulder the burden of Defendant's cost of doing business by failing to reimburse its employees
17 for necessary business expenditures, specifically requiring employees to utilize their personal cell
18 phones in direct consequence of the discharge of their duties to Defendant.

19 76. Plaintiff acting as a Private Attorney General pursuant to the Private Attorney
20 General Act (2004), and more specifically, Labor Code section 2698, will and does seek to
21 recover any and all penalties for each and every violation shown to exist or to have occurred
22 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
23 otherwise only available to public agency enforcement actions. Funds recovered will be
24 distributed in accordance with the PAGA.

25 77. Accordingly, Plaintiff entitled to attorneys' fees and costs pursuant to Labor Code
26 section 2699, subdivision (g)(1), and prejudgment interest.

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

MAHONEY LAW GROUP, APC

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Cedric Joseph, Esq.
Attorneys for Plaintiff FERNANDO MARTINEZ