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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/06/2023 at 05:24:00 PM

Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

NATASHA LE, individually, and on behalf
of other members of the general public
similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

INDEPENDENT OPTIONS, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2022-00046457-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (2) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

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(9) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Natasha Le, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of San Diego, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one location within the County of San Diego, including Defendants' facility in San Diego (8555 Aero Drive, Suite #205, San Diego, California 92123). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Diego County and Plaintiff could bring this action to recover penalties in San Diego County, venue is proper.

THE PARTIES

4. Plaintiff Natasha Le is a resident of Westminster, in Orange County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately May 2021 to August 2022. Plaintiff worked as a Registered Nurse at Defendants' location in Fullerton, California. During her employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, giving clients their treatments and medications; repositioning, feeding, and entertaining clients; and training other healthcare workers at the site.

5. INDEPENDENT OPTIONS, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and

capacities become known.

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of INDEPENDENT OPTIONS, INC. at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, INDEPENDENT OPTIONS, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “INDEPENDENT OPTIONS”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

10. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants offer residential programs, supported and independent living services, and day programs for adults and children with developmental disabilities. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Corona, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received

1 the same standardized documents and/or written policies. Upon information and belief, the
2 usage of standardized documents and/or written policies, including new-hire documents,
3 indicate that Defendants dictated policies at the corporate level and implemented them
4 company-wide, regardless of their employees' assigned locations or positions. Upon
5 information and belief, Defendants set forth uniform policies and procedures in several
6 documents provided at an employee's time of hire.

7 13. Upon information and belief, Defendants maintain a centralized Payroll
8 department at their company headquarters in Corona, California, which processes payroll for
9 all non-exempt, hourly paid employees working for Defendants at their various locations and
10 jobsites in California, including Plaintiff and class members. Based upon information and
11 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
12 employees in California, irrespective of their work locations. Upon information and belief,
13 Defendants process payroll for departing employees in the same manner throughout the State
14 of California, regardless of the manner in which each employee's employment ends.

15 14. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

17 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
19 and advisors knowledgeable about California labor and wage law, employment and personnel
20 practices, and about the requirements of California law.

21 16. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to meal periods in
23 accordance with the California Labor Code and applicable IWC Wage Order or payment of
24 one (1) additional hour of pay at their regular rates of pay when they were not provided with
25 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
26 were not provided with all meal periods or payment of one (1) additional hour of pay at their
27 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
28 period.

1 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to rest periods in
3 accordance with the California Labor Code and applicable IWC Wage Order or payment of
4 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
5 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
6 and class members were not authorized and permitted to take compliant rest periods, nor did
7 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
8 pay at their regular rates of pay when they were not authorized and permitted to take a
9 compliant rest period.

10 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and/or class
11 members were not paid for all hours worked because all hours worked were not recorded.

12 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and/or class members were entitled to receive certain wages
14 for overtime compensation and that they were not receiving certain wages for overtime
15 compensation.

16 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to be paid at a regular rate
18 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
19 premiums, that included as eligible income all remuneration required by law, including but not
20 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
21 forms of compensation, but failed to include all forms of remuneration in calculating the
22 regular rate of pay for Plaintiff and class members.

23 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and/or class members were entitled to receive at least
25 minimum wages for compensation and that they were not receiving at least minimum wages
26 for work that was required to be done off-the-clock.

27 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive complete and

1 accurate wage statements in accordance with California law. In violation of the California
2 Labor Code, Plaintiff and class members were not provided complete and accurate wage
3 statements.

4 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to maintain accurate and complete payroll records in
6 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
7 knowingly, and intentionally failed to do so.

8 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of all
10 wages earned upon termination of employment. In violation of the California Labor Code,
11 Plaintiff and class members did not receive payment of all wages due, including, but not
12 limited to, overtime wages and/or meal and rest period premiums, within permissible time
13 periods.

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to timely payment of wages
16 during their employment. In violation of the California Labor Code, Plaintiff and class
17 members did not receive payment of all wages, including, but not limited to, overtime wages
18 and/or meal and rest period premiums, within permissible time periods.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and/or class members were entitled to receive sick leave
21 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
22 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation,
23 but failed to include all forms of remuneration in calculating the regular rate of pay for sick
24 leave pay.

25 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
28 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and

1 falsely represented to Plaintiff and class members that they were properly denied wages, all in
2 order to increase Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 28. At all times herein set forth, PAGA provides that any provision of law under
5 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
6 assessed and collected by the LWDA for violations of the California Labor Code and
7 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
8 civil action brought on behalf of themselves and other current or former employees pursuant
9 to procedures outlined in California Labor Code section 2699.3.

10 29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the
12 alleged violations was committed."

13 30. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

16 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
18 following requirements have been met:

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged
23 violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

7 32. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
8 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
9 provision other than those listed in Section 2699.5 after the following requirements have been
10 met:

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 33. On December 2, 2022, Plaintiff provided written notice by online filing to the

1 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-922486-22. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants dated December 2, 2022, is attached hereto as
8 "Exhibit 1."

9 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff
10 sent the written notice described above, and the LWDA has not responded that it intends to
11 investigate Plaintiff's claims and Defendants have not cured the violations.

12 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
15 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

16 36. Labor Code section 558(a) provides "[a]ny employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
20 dollars (\$50) for each underpaid employee for each pay period for which the employee was
21 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
23 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
24 to any other civil or criminal penalty provided by law."

25 37. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
27 rights by violating various sections of the California Labor Code as set forth above.

28 38. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
5 private attorney general, seeks assessment and collection of civil penalties for herself, all other
6 aggrieved employees, and the State of California against Defendants for violations of
7 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),
8 1182.12, 1194, 1197, 1197.1, and 1198.

9 **CLASS ACTION ALLEGATIONS**

10 40. Plaintiff brings this action on her own behalf, as well as on behalf of each and
11 all other persons similarly situated, and thus seeks class certification under California Code of
12 Civil Procedure section 382.

13 41. All claims alleged herein arise under California law for which Plaintiff seeks
14 relief authorized by California law.

15 42. Plaintiff's proposed class consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly
17 paid employees in California, at any time from December 7, 2021,
until the date of trial ("Class").

18 43. Plaintiff's proposed subclass consists of and is defined as follows:

19 All persons who worked for Defendants as non-exempt, hourly
20 paid employees in California and who received at least one wage
21 statement at any time from December 7, 2021, until the date of
trial ("Subclass").

22 44. Members of the Class and Subclass are referred to herein as "class members."

23 45. Plaintiff reserves the right to redefine the Class and Subclass and to add
24 additional subclasses as appropriate based on further investigation, discovery, and specific
25 theories of liability.

26 46. There are common questions of law and fact as to class members that
27 predominate over questions affecting only individual members, including, but not limited to:

28 (a) Whether Defendants failed to provide Plaintiff and class members with

- 1 meal periods;
- 2 (b) Whether Defendants failed to authorize and permit Plaintiff and class
- 3 members to take rest periods;
- 4 (c) Whether Defendants required Plaintiff and/or class members to work
- 5 over eight (8) hours per day, over twelve (12) hours per day, or over
- 6 forty (40) hours per week and failed to pay all legally required overtime
- 7 compensation to Plaintiff and/or class members;
- 8 (d) Whether Defendants failed to include all forms of remuneration in the
- 9 “regular rate” of pay as required by law for purposes of paying overtime
- 10 wages and/or meal and rest period premiums to Plaintiff and class
- 11 members;
- 12 (e) Whether Defendants failed to pay Plaintiff and/or class members at least
- 13 minimum wages for all hours worked;
- 14 (f) Whether Defendants provided Plaintiff and class members with
- 15 complete and accurate wage statements as required by California Labor
- 16 Code section 226(a);
- 17 (g) Whether Defendants maintained accurate payroll records as required by
- 18 California Labor Code section 1174(d);
- 19 (h) Whether Defendants failed to pay earned overtime wages and/or meal
- 20 and rest period premiums due to Plaintiff and class members upon their
- 21 discharge;
- 22 (i) Whether Defendants failed timely to pay overtime wages and/or meal
- 23 and rest period premiums due to Plaintiff and class members during
- 24 their employment;
- 25 (j) Whether Defendants failed to properly calculate the “regular rate” of
- 26 pay upon which Plaintiff’s and/or class members’ sick leave rate of pay
- 27 was based;
- 28 (k) Whether Defendants engaged in unlawful and unfair business practices

1 in violation of California Business & Professions Code sections 17200,
2 *et seq.*; and

- 3 (l) The appropriate amount of damages, restitution, or monetary penalties
4 resulting from Defendants' violations of California law.

5 47. There is a well-defined community of interest in the litigation and the class
6 members are readily ascertainable:

- 7 (a) Numerosity: The class members are so numerous that joinder of all
8 members would be unfeasible and impractical. The membership of the
9 entire class is unknown to Plaintiff at this time; however, the class is
10 estimated to be greater than one hundred (100) individuals and the
11 identity of such membership is readily ascertainable by inspection of
12 Defendants' employment records.
- 13 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
14 protect the interests of each class member with whom she has a well-
15 defined community of interest, and Plaintiff's claims (or defenses, if
16 any) are typical of all class members as demonstrated herein.
- 17 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
18 protect the interests of each class member with whom she has a well-
19 defined community of interest and typicality of claims, as demonstrated
20 herein. Plaintiff acknowledges that she has an obligation to make
21 known to the Court any relationship, conflicts or differences with any
22 class member. Plaintiff's attorneys, the proposed class counsel, are
23 versed in the rules governing class action discovery, certification, and
24 settlement. Plaintiff has incurred, and throughout the duration of this
25 action, will continue to incur costs and attorneys' fees that have been,
26 are, and will be necessarily expended for the prosecution of this action
27 for the substantial benefit of each class member.
- 28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort, and expense as compared with separate
3 lawsuits, and will avoid inconsistent outcomes because the same issues
4 can be adjudicated in the same manner and at the same time for the
5 entire class.

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

15 **FIRST CAUSE OF ACTION**

16 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

17 **Violations**

18 **(Against all Defendants)**

19 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 49. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

28 50. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 51. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
4 and the applicable IWC Wage Order also require employers to provide a second meal period
5 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
6 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
7 total hours worked is no more than twelve (12) hours, the second meal period may be waived
8 by mutual consent of the employer and the employee only if the first meal period was not
9 waived. The applicable IWC Wage Order further provides that employees in the health care
10 industry who work shifts in excess of eight (8) hours in a workday may waive one of their two
11 meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs.
12 tit. 8, § 11050(11)(D).

13 52. Under California law, an employer cannot evade meal period requirements via
14 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
15 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
16 provided with the opportunity to eat his or her meal while performing the duties required and
17 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
18 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
19 (2019).

20 53. First, during the relevant time period, Defendants maintained and implemented
21 a company-wide unlawful written meal period policy that does not comply with IWC Wage
22 Order No. 5-2001's requirements for on-duty meal periods. IWC Wage Order No. 5-2001
23 permits on-duty meal periods only when (a) the employees eat with the clients during their
24 meals and are provided with the same meal the clients eat at no charge; or (b) the employee is
25 the sole person in charge and, on the day shift, is provided a meal at no charge. Cal. Code
26 Regs., tit. 8, § 11050(11)(E). Further, an on-duty meal period permitted by IWC Wage Order
27 No. 5-2001 does not absolve employers of the duty to provide timely, 30-minute meal periods.
28 *L'Chaim*, 38 Cal. App. 5th at 147 ("an employee subject to subdivision 11(E) is still entitled

1 to a 30-minute meal period even though that meal period may be on-duty instead of off-
2 duty.”). Defendants’ “Agreement for On-Duty Meal Period” states, in relevant part, “I . . .
3 agree that the nature of my work prevents me from being relieved of all duty during my shift
4 to take a thirty (30)[]minute unpaid meal period. I agree to **waive** the required meal period
5 and agree to work during the meal period.” (Emphasis added.) Defendants’ on-duty meal
6 policy did not inform Plaintiff and class members that they are entitled to a 30-minute on-duty
7 meal period and that on-duty meal periods must be timely. Indeed, Defendants’ policy
8 incorrectly states that the employee waives the meal period entirely, and therefore is facially
9 invalid.

10 54. Defendants, on information and belief, do not have any policies with respect to
11 providing Plaintiff and class members with compliant meal periods, pursuant to IWC Wage
12 Order No. 5-2001. For example, throughout her employment, Plaintiff was required to attend
13 to residents during her meal periods and thus remained on-duty. Plaintiff was not the sole
14 person in charge, nor was she provided with the same meal as residents at no charge, but
15 instead ate food that she brought from home or ate staff meals.

16 55. Moreover, Plaintiff and class members did not sign valid meal period waivers
17 on days that they were entitled to meal periods and were not relieved of all duties. To the
18 extent that Defendants’ “Agreement for On-Duty Meal Period” functioned as a blanket meal
19 period waiver, it is invalid as it does not specify that employees are entitled to two meal
20 periods during shifts of more than eight hours, and it is not signed by the employer, as
21 required by IWC Wage Order No. 5-2001, subdivision 11(D).

22 56. Second, Defendants did not schedule second meal periods and had no policy for
23 permitting Plaintiff and class members to take second 30-minute meal periods on days that
24 they worked in excess of ten (10) hours in one day. For example, Plaintiff would sometimes
25 work in excess of ten (10) hours per day, and was not provided her second meal period during
26 these shifts. Defendants did not present Plaintiff and class members with the opportunity to
27 voluntarily choose whether to waive their second 30-minute meal period on any given day.

28 57. Third, during the relevant time period, Defendants had, and continue to have, a

1 company-wide policy and/or practice of understaffing while assigning heavy workloads,
2 which resulted in a lack of adequate meal period coverage because there were too few
3 employees on duty to handle the heavy workloads and provide meal coverage. Moreover,
4 Defendants had a company-wide practice of failing to schedule meal periods altogether, which
5 further prevented Plaintiff and class members from taking all timely, uninterrupted meal
6 periods to which they were entitled. As a result, Plaintiff and class members would be forced
7 to work in excess of five (5) hours before taking a meal period, have their meal periods
8 interrupted, and/or had to forgo their meal periods altogether. For example, because of
9 Defendants' policy and/or practice of understaffing while assigning heavy workloads, Plaintiff
10 missed all of her meal periods in order to provide care and supervision for residents.

11 58. Fourth, in conjunction with Defendants' practice of understaffing, Defendants
12 forced Plaintiff and class members to work through their meal periods by requiring them to
13 remain on the premises for their meal periods. Because Plaintiff and class members were
14 restricted from leaving the premises during meal periods, they were denied the ability to use
15 their meal periods freely for their own purposes. Thus, Defendants effectively maintained
16 control over Plaintiff and class members during meal periods.

17 59. At all times herein mentioned, Defendants knew or should have known that, as
18 a result of these policies, Plaintiff and class members were prevented from being relieved of
19 all duties and required to perform some of their assigned duties during meal periods.
20 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
21 members meal period premiums when meal periods were late, interrupted, shortened, and/or
22 missed.

23 60. Moreover, Defendants engaged in a company-wide practice and/or policy of
24 not paying all meal period premiums owed when compliant meal periods are not provided.
25 Because of Defendants' practices and/or policies, Plaintiff and class members have not
26 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
27 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
28 interrupted meal periods, they did so at the incorrect rates. In addition to an hourly wage,

1 Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or
2 other forms of remuneration. However, in violation of the California Labor Code, Defendants
3 failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
4 and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when
5 Plaintiff and class members received meal period premiums and these other forms of pay,
6 Defendants failed to pay full meal period premiums by paying a lower rate than required. As
7 a result, Defendants failed to provide Plaintiff and class members compliant meal periods in
8 violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal
9 period premiums due.

10 61. Defendants' conduct violates the applicable IWC Wage Order, and California
11 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
12 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
13 rate of compensation for each work day that the meal period was not provided.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 16 **(Against all Defendants)**

17 62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 63. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
21 members' employment by Defendants.

22 64. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3 ½) hours.

28 65. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable
2 order of the California IWC. To comply with its obligation to authorize and permit rest
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
4 employer must “relinquish any control over how employees spend their break time, and
5 relieve their employees of all duties—including the obligation that an employee remain on
6 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
7 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
8 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
9 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
10 required rest period was not authorized and permitted.

11 66. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
13 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
14 practices, including understaffing and assigning heavy workloads prevented Plaintiff and class
15 members from being relieved of all duty to take rest periods. Additionally, Defendants failed
16 to schedule rest periods which, coupled with Defendants’ failure to provide adequate rest
17 period coverage, further led to Plaintiff and class members not being authorized and permitted
18 to take rest periods.

19 67. Furthermore, during the relevant time period, Defendants maintained and
20 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
21 and class members remain on the premises during their rest periods, even when they were not
22 in sole charge of residents. Because Plaintiff and class members were restricted from leaving
23 Defendants’ premises during rest periods, they were denied the ability to use their rest periods
24 freely for their own purposes, such as completing personal errands. Thus, Defendants
25 effectively maintained control over Plaintiff and class members during rest periods.

26 68. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

1 Plaintiff had to forego her rest periods altogether because of the heavy workload and
2 Defendants' failure to schedule rest periods for employees.

3 69. Defendants have also engaged in a company-wide practice and/or policy of not
4 paying all rest period premiums owed when compliant rest periods are not authorized and
5 permitted. Because of this practice and/or policy, Plaintiff and class members have not
6 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
7 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
8 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
9 premiums because Defendants failed to include all forms of compensation, such as incentive
10 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.
11 As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them
12 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the
13 applicable IWC Wage Order.

14 70. Defendants' conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
16 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
17 compensation for each work day that a compliant rest period was not authorized and
18 permitted.

19 **THIRD CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 21 **(Against all Defendants)**

22 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 72. Labor Code section 1198 makes it illegal to employ an employee under
25 conditions of labor that are prohibited by the applicable wage order. California Labor Code
26 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
27 be the . . . standard conditions of labor for employees. The employment of any employee . . .
28 under conditions of labor prohibited by the order is unlawful.”

1 73. California Labor Code section 1198 and the applicable IWC Wage Order
2 provide that it is unlawful to employ persons without compensating them at a rate of pay
3 either time-and-one-half or two-times that person's regular rate of pay, depending on the
4 number of hours worked by the person on a daily or weekly basis.

5 74. Specifically, the applicable IWC Wage Order provides that Defendants are and
6 were required to pay Plaintiff and class members working more than eight (8) hours in a day
7 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
8 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
9 workweek.

10 75. The applicable IWC Wage Order further provides that Defendants are and were
11 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
12 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
13 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
14 employee, including nondiscretionary bonuses and incentive pay.

15 76. California Labor Code section 510 codifies the right to overtime compensation
16 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
17 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
18 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
19 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
20 in a day on the seventh (7th) day of work.

21 77. During the relevant time period, Defendants did not pay Plaintiff and class
22 members the correct overtime rate for the recorded overtime hours that they generated. In
23 addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay,
24 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
25 California Labor Code, Defendants failed to incorporate all compensation, including incentive
26 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
27 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
28 times when Plaintiff and class members worked overtime and received these other forms of

1 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
2 required.

3 78. For example, Defendants paid Plaintiff and class members nondiscretionary
4 bonuses which were listed on Plaintiff's and class members' wage statements as "Bonus."
5 During pay periods that Plaintiff and class members were paid overtime wages, Defendants
6 did not incorporate the nondiscretionary bonuses into Plaintiff's and class members' regular
7 rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours
8 worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate
9 of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate
10 the overtime rates of pay based on all remuneration paid has resulted in an underpayment of
11 overtime wages to Plaintiff and class members on a company-wide basis.

12 79. Defendants' failure to pay Plaintiff and class members the balance of overtime
13 compensation as required by California law, violates the provisions of California Labor Code
14 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
15 members are entitled to recover from Defendants their unpaid overtime compensation, as well
16 as interest, costs, and attorneys' fees.

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 19 **Statements and Failure to Maintain Accurate Payroll Records** 20 **(Against all Defendants)**

21 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 81. At all relevant times herein set forth, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate and
25 complete itemized wage statement in writing, including, but not limited to, the name and
26 address of the legal entity that is the employer, the inclusive dates of the pay period, total
27 hours worked, and all applicable rates of pay.

28 82. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
2 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
3 that fail to correctly list: gross wages earned; net wages earned; and all applicable hourly rates
4 in effect during the pay period, including rates of pay for overtime wages and/or meal and rest
5 period premiums, and the corresponding number of hours worked at each hourly rate.
6 Specifically, Defendants violated sections 226(a)(1), 226(a)(5), and 226(a)(9).

7 83. Because Defendants did not calculate Plaintiff's and Subclass members' regular
8 rate of pay correctly for purposes of paying overtime wages and/or meal and rest period
9 premiums, Defendants did not list the correct amount of gross wages in compliance with
10 section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net
11 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
12 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
13 and/or meal and rest premiums, in violation of section 226(a)(9).

14 84. The wage statement deficiencies also include, among other things, failing to list
15 the total hours worked by the employee; failing to list the number of piece-rate units earned
16 and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all
17 deductions; failing to list the inclusive dates of the period for which employees were paid;
18 failing to list the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number;
20 failing to list the name and address of the legal entity that is the employer; and/or failing to
21 state all hours worked as a result of not recording or stating the hours worked off-the-clock.

22 85. California Labor Code section 1174(d) provides that "[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),

Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record all wages owed, including overtime wages and/or meal and rest period premiums.

86. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198. Also, in light of Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

87. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

89. This cause of action is dependent upon, and wholly derivative of, the overtime wages and/or meal and rest period premiums that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

90. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

91. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages and/or meal and rest period premiums at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

92. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

**Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)**

93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

94. This cause of action is dependent upon, and wholly derivative of, the overtime wages and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

95. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
3 the month during which the labor was performed.

4 96. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned by any person in any employment between the sixteenth (16th) and the last day,
6 inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
8 month.

9 97. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned for labor in excess of the normal work period shall be paid no later than the payday for
11 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
12 204 provides that the requirements of this section are deemed satisfied by the payment of
13 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
14 seven (7) calendar days following the close of the payroll period.

15 98. During the relevant time period, Defendants willfully failed to pay Plaintiff and
16 class members all wages due including, but not limited to, overtime wages and/or meal and
17 rest period premiums within the time periods specified by California Labor Code section 204.

18 99. Defendants' failure to pay Plaintiff and class members all wages due violates
19 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
20 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

21 **SEVENTH CAUSE OF ACTION**

22 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

23 **(Against all Defendants)**

24 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 101. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
28 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,

1 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
2 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
3 Labor Code sections not found in section 2699.5, including sections 246, 516, and 1182.12.

4 102. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
8 and other aggrieved employees with meal periods, as alleged herein;
- 9 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to authorize and
11 permit Plaintiff and other aggrieved employees to take rest periods, as
12 alleged herein;
- 13 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
14 Wage Order for Defendants' failure to compensate Plaintiff and/or other
15 aggrieved employees with all required overtime pay, as alleged herein
16 and as set forth below;
- 17 (d) Violation of Labor Code sections 226.7, 510, and 1198, and the
18 applicable IWC Wage Order for Defendants' failure to include all forms
19 of remuneration in the "regular rate" of pay as required by law for
20 purposes of paying overtime wages, minimum wages, and/or meal and
21 rest period premiums, to Plaintiff and other aggrieved employees, as
22 alleged herein;
- 23 (e) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
24 1198, and the applicable IWC Wage Order for Defendants' failure to
25 compensate other aggrieved employees with at least minimum wages for
26 all hours worked, as set forth below;
- 27 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
28 IWC Wage Order for failure to provide accurate and complete wage

statements to Plaintiff and other aggrieved employees, as alleged herein and as set forth below;

(g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein and as set forth below;

(h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;

(i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and

(j) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to other aggrieved employees, as set forth below.

103. As stated, Defendants' policies and/or practices of understaffing their facilities while assigning heavy workloads resulted in a failure to provide other aggrieved employees with adequate meal period coverage, and thus, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a company-wide practice of failing to schedule meal periods altogether, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees missed meal periods and/or had meal periods interrupted in order to complete their assigned workloads. Defendants did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

104. Defendants knew or should have known that as a result of these company-wide practices and/or policies, other aggrieved employees were working during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

105. Defendants' failure to pay other aggrieved employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code

1 sections 510 and 1198.

2 106. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
4 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
5 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the
6 time during which an employee is suffered or permitted to work for the employer, whether or
7 not required to do so, as interpreted in accordance with the provisions of the Fair Labor
8 Standards Act.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

9 107. Defendants’ failure to compensate other aggrieved employees at least minimum
10 wages for all hours worked off-the-clock, as alleged herein, in violation of California Labor
11 Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order.

12 108. At all relevant times, Defendants have knowingly and intentionally provided
13 other aggrieved employees with uniform, incomplete, and inaccurate wage statements.
14 Because Defendants did not record the time other aggrieved employees spent working off-the-
15 clock, Defendants did not list the correct amount of gross wages and net wages earned by
16 other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5),
17 respectively. For the same reason, Defendants failed to accurately list the total number of
18 hours worked by other aggrieved employees, in violation of section 226(a)(2), and failed to
19 list the applicable hourly rates of pay in effect during the pay period and the corresponding
20 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

21 109. Defendants also willfully failed to maintain accurate payroll records for other
22 aggrieved employees showing the daily hours they worked and the wages paid thereto as a
23 result of failing to record the off-the-clock hours that they worked, and failed to keep accurate
24 records of work period and meal period start and stop times for other aggrieved employees.
25 Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198 and the
26 applicable IWC Wage Order.

27 110. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
28 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more

1 days from the commencement of employment with paid sick days, to be accrued at least one
2 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
3 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
4 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
5 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
6 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
7 the same manner as the regular rate of pay for the workweek in which the employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
9 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
10 total wages, not including overtime premium pay, by the employee's total hours worked in the
11 full pay periods of the prior 90 days of employment."

12 111. During the relevant time period, Defendants did not pay other aggrieved
13 employees the correct sick leave rates of pay. As stated, in addition to an hourly wage,
14 Defendants paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or
15 other forms of remuneration. However, in violation of the California Labor Code, Defendants
16 failed to incorporate all remunerations, including incentive pay and/or nondiscretionary
17 bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick
18 leave rate. Therefore, during times when other aggrieved employees took sick leave and
19 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
20 lower sick leave rate than required. Specifically, Defendants paid other aggrieved employees
21 sick leave based on their hourly rate of pay instead of their regular rate of pay. Defendants'
22 failure to properly calculate the sick leave rates of pay based on all remuneration paid has
23 resulted in an underpayment of sick leave benefits to other aggrieved employees on a
24 company-wide basis in violation of Labor Code 246(l).

25 112. Therefore, other aggrieved employees are entitled to recover civil penalties
26 pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 114. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 115. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 116. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 117. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Failing to provide uninterrupted meal periods to Plaintiff and class
22 members in violation of California Labor Code sections 226.7, 512(a),
23 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 24 (b) Failing to authorize and permit Plaintiff and class members to take
25 uninterrupted rest periods in violation of California Labor Code sections
26 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
27 herein;
- 28 (c) Failing to include all forms of remuneration in the “regular rate” of pay

1 as required by law for purposes of paying overtime wages and/or meal
2 and rest period premiums to Plaintiff and class members, in violation of
3 California Labor Code sections 226.7, 510, and 1198, and the applicable
4 IWC Wage Order, as alleged herein;

5 (d) Failing to provide Plaintiff and class members with accurate wage
6 statements and failing to maintain accurate payroll records in violation
7 of California Labor Code sections 226(a), 1174(d), and 1198, and the
8 applicable IWC Wage Order, as alleged herein; and

9 (e) Failing timely to pay all earned wages to Plaintiff and class members in
10 violation of California Labor Code section 204, as alleged herein.

11 118. As a result of the violations of California law herein described, Defendants
12 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
13 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
14 herein.

15 119. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
16 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
17 Defendants during a period that commences four years prior to the filing of this complaint; a
18 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
19 class members; and an award of attorneys' fees pursuant to California Code of Civil
20 Procedure section 1021.5 and other applicable laws; and an award of costs.

21 **NINTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unfair Business Practices**

24 **(Against all Defendants)**

25 120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 121. Defendants are "persons" as defined by California Business & Professions
28 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 122. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
4 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
5 seeks to enforce important rights affecting the public interest within the meaning of Code of
6 Civil Procedure section 1021.5.

7 123. Defendants' activities, namely Defendants' company-wide practice and/or
8 policy of not paying Plaintiff and class members all meal and rest period premiums due to
9 them under Labor Code section 226.7, deprived Plaintiff and class members of the
10 compensation guarantee and enhanced enforcement implemented by section 226.7. The
11 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
12 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
13 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
14 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
15 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
16 unfair business practice in violation of California Business & Professions Code sections
17 17200, *et seq.* (*Id.*)

18 124. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on any unfair business practice. In the instant case, Defendants' policies
20 and practices have violated the spirit of California's meal and rest period laws and constitute
21 acts against the public policy behind these laws.

22 125. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
23 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
24 benefits implemented by section 226.7 withheld and retained by Defendants during a period
25 that commences four years prior to the filing of this complaint; a permanent injunction
26 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
27 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
28 Procedure section 1021.5 and other applicable laws; and an award of costs.

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1 **As to the Second Cause of Action**

2 12. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
4 failing to authorize and permit Plaintiff and class members to take all rest periods;

5 13. That the Court make an award to the Plaintiff and class members of one (1) hour
6 of pay at each employee's regular rate of pay for each workday that a rest period was not
7 authorized and permitted;

8 14. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 15. For premiums pursuant to California Labor Code section 226.7(c);

11 16. For pre-judgment interest on any unpaid rest period premiums from the date
12 such amounts were due, or as otherwise provided by law;

13 17. For attorneys' fees pursuant to California Code of Civil Procedure section
14 1021.5, or as otherwise provided by law; and

15 18. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Third Cause of Action**

18 19. That the Court declare, adjudge, and decree that Defendants violated California
19 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
20 pay all overtime wages due to Plaintiff and class members;

21 20. For general unpaid wages at overtime wage rates and such general and special
22 damages as may be appropriate;

23 21. For pre-judgment interest on any unpaid overtime compensation commencing
24 from the date such amounts were due, or as otherwise provided by law;

25 22. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code section 1194(a); and

27 23. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Fourth Cause of Action

24. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For injunctive relief pursuant to California Labor Code section 226(h);

27. For statutory penalties pursuant to California Labor Code section 226(e);

28. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

31. For all actual, consequential and incidental losses and damages, according to proof;

32. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

33. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

34. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages and/or meal and rest period premiums, during their employment;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For statutory penalties according to proof pursuant to California Labor Code section 210;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 246 (by failing to properly calculate sick leave pay);

43. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor

Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

44. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

45. For pre-judgment and post-judgment interest as provided by law; and

46. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

47. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, and failing to timely pay Plaintiff and class members all earned wages during employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

48. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

49. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

51. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

53. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

54. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

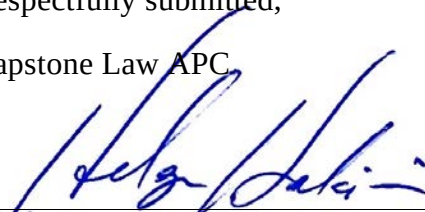
55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

56. For pre-judgment and post-judgment interest as provided by law; and
For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 6, 2023

Respectfully submitted,

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By: 

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