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Electronically FILED by
Superior Court of California,
County of Los Angeles
4/10/2023 12:44 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

Attorneys for Plaintiffs Danielle Anderson and Sethea Sang, on behalf of themselves, all others similarly situated, the general public, and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANIELLE ANDERSON, SETHEA SANG,
on behalf of themselves and all others similarly
situated and on behalf of the general public,

Plaintiffs,

v.

ADVANCED SURGICAL INSTITUTE, a
California corporation, TESTINGDX LLC, a
California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: **23STCV07810**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 226.8, 510, 1194, AND
1194.2)**

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 4-2001)**

**3. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7; IWC WAGE
ORDER 4-2001)**

**4. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES (LABOR
CODE § 2802)**

**5. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

**7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.**

**8. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2699(f) FOR VIOLATIONS
OF LABOR CODE §§ 201, 202, 226(a), 226.7,
226.8, 510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3, 246(i), AND 558**

DEMAND FOR JURY TRIAL

1 Plaintiffs DANIELLE ANDERSON and SETHEA SANG (collectively referred to as the
2 “Plaintiffs”), individually and on behalf of all similarly situated individuals (the “Class”), on behalf
3 of the general public, and as “aggrieved employees” under the Labor Code Private Attorneys General
4 Act of 2004, codified as Labor Code §§ 2698 *et seq.*, complain of ADVANCED SURGICAL
5 INSTITUTE, a California corporation, TESTINGDX LLC, a California limited liability company,
6 and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

7 **I.**

8 **INTRODUCTION AND FACTUAL BACKGROUND**

9 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382
10 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and all other independent contractors who
11 currently work or formerly worked for Defendants within the State of California.

12 2. For at least four (4) years prior to the filing of this action and continuing to the present
13 (the “liability period”), Defendants have had consistent policies of misclassifying Plaintiffs and Class
14 Members (as defined below) as Independent Contractors; failing to pay all wages due, provide legally
15 compliant meal and rest periods, or compensation in lieu thereof; reimburse all business-related
16 expenses; provide accurately itemized wage statements; and timely pay wages upon separation of
17 employment.

18 3. Plaintiffs, on behalf of themselves and Class Members, bring this action pursuant to
19 Labor Code §§ 201-203, 226(a), 226.3, 226.7, 226.8, 246(i), 510, 512, 558, 1194, 1194.2, and 2802
20 seeking compensation for all unpaid wages and expense reimbursement, liquidated damages, unpaid
21 meal and rest period premium wages, statutory penalties, injunctive and other equitable relief, and
22 reasonable attorneys’ fees and costs.

23 4. Plaintiffs, on behalf of themselves and Class Members, and pursuant to Business &
24 Professions Code §§ 17200-17208, seek injunctive relief, restitution, and disgorgement of all benefits
25 Defendants enjoyed from their failure to pay all wages and expense reimbursement due to Class
26 Members.

27 5. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
28 Code § 2698 *et seq.*, seek civil penalties for Defendants’ violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiffs and Class Members in Los Angeles County, California.

II.

PARTIES

A. Plaintiffs

7. Plaintiff DANIELLE ANDERSON has contracted with Defendants since April 15, 2022 and works in Los Angeles County, California.

8. Plaintiff SETHEA SANG has contracted with Defendants from April 10, 2022 through January 8, 2023 and from February 25, 2023 and continuing through the present in Los Angeles County, California.

9. During their work with Defendants, Plaintiffs have been:

- a. Willfully misclassified as Independent Contractors, rather than non-exempt employees;
- b. Willfully denied the payment of all wages due;
- c. Willfully denied meal periods or compensation in lieu thereof;
- d. Willfully denied rest periods or compensation in lieu thereof;
- e. Willfully denied reimbursement of all business-related expenses;
- f. Willfully denied accurately itemized wage statements; and
- g. Willfully denied timely payment of all wages due at the separation of their employment.

B. Defendants

10. Defendant ADVANCED SURGICAL INSTITUTE is a California corporation that contracted with Plaintiffs, Class Members, and Aggrieved Employees in Los Angeles County, California.

11. Defendant TESTINGDX LLC is a California limited liability company that contracted with Plaintiffs, Class Members, and Aggrieved Employees in Los Angeles County, California.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who

1 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
2 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
3 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated hereinafter as DOES when such identities become known.

6 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
9 legally attributable to the other Defendants.

10 14. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
11 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
12 provisions of the California Labor Code as alleged herein.

13 III.

14 CLASS ACTION ALLEGATIONS

15 15. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as
16 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the
17 following Class composed of and defined as follows:

18 THE CLASS

19 All independent contractors who currently work or formerly worked in
20 California for Defendants at any time since the date four years
21 preceding the filing of this Action, plus any additional time tolled by
22 the California State Judicial Council pursuant to Emergency Rule 9 in
23 response to the COVID-19 pandemic, and continuing through the
24 present.

25 16. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or
26 modify this class description with greater specificity or further division into subclasses or limitation
27 to particular issues.

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1 17. This action has been brought and may properly be maintained as a class action under
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
3 interest in the litigation and the proposed Class are easily ascertainable.

4 **A. Numerosity**

5 18. The potential Class Members as defined are so numerous that joinder of all Class
6 Members is impracticable. While the precise number of Class Members has not been ascertained at
7 this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants currently
8 contract with, and during the relevant time periods contracted with, over 50 persons in the State of
9 California who fall within the Class definition.

10 19. Accounting for turnover during the relevant period necessarily increases this number.
11 Plaintiffs allege Defendants' employment records would provide information as to the number and
12 location of Class Members. Joinder of Class Members is not practicable.

13 **B. Commonality**

14 20. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact include,
16 without limitation:

- 17 a. Whether Defendants misclassify Plaintiffs and Class Members as Independent
18 Contractors, in violation of Labor Code § 226.8;
- 19 b. Whether Defendants fail to pay all wages due to Plaintiffs and Class Members,
20 in violation of Labor Code §§ 226.8, 510, 1194, and 1194.2;
- 21 c. Whether Defendants fail to properly provide meal periods or compensation in
22 lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§
23 226.7 and 512 and IWC Wage Order 4-2001;
- 24 d. Whether Defendants fail to properly provide rest periods or compensation in
25 lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §
26 226.7 and IWC Wage Order 4-2001;
- 27 e. Whether Defendants fail to reimburse Plaintiffs and Class Members for
28 business-related expenses, in violation of Labor Code § 2802;

- 1 f. Whether Defendants fail to provide Plaintiffs and Class Members with
2 accurately itemized wage statements, in accordance with Labor Code § 226(a),
3 (e);
4 g. Whether Defendants fail to timely pay Class Members all wages due and owing
5 at the separation of their employment, in violation of Labor Code §§ 201-203;
6 and
7 h. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant
8 to Business & Professions Code § 17200 *et seq.*

9 **C. Typicality**

10 21. The claims of the named Plaintiffs are typical of the claims of Class Members.
11 Plaintiffs and Class Members sustained injuries and damages arising out of and caused by
12 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
13 of law, and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 22. Plaintiffs will fairly and adequately represent and protect the interests of Class
16 Members. Counsel who represents Plaintiffs are competent and experienced in litigating large
17 employment class actions.

18 **E. Superiority of Class Action**

19 23. A class action is superior to other available means for the fair and efficient adjudication
20 of this controversy. Individual joinder of all proposed Class Members is not practicable, and
21 questions of law and fact common to the proposed Class predominate over any questions affecting
22 only individual members of the proposed Class. Each member of the proposed Class has been
23 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24 24. Class action treatment will allow those similarly situated persons to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiffs is unaware of any difficulties that are likely to be encountered in the management of this
27 action that would preclude its maintenance as a class action.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL WAGES DUE**

6 **(LABOR CODE §§ 226.8, 510, 1194, AND 1194.2)**

7 25. Plaintiffs incorporate paragraphs 1 through 24 of this Complaint as though fully set
8 forth herein.

9 26. During the liability period, Defendants misclassified Plaintiffs and Class Members as
10 independent contractors, instead of non-exempt employees, in violation of Labor Code § 226.8.
11 Defendants control their wages, hours, and working conditions. Defendants provide them with a set
12 hourly schedule in which to perform their jobs, thereby controlling Plaintiffs' and Class Members'
13 working hours—including, among other things, the number of hours they are permitted to work and
14 their work schedules. Plaintiffs and Class Members are also required to clock in and out for their meal
15 periods and notate their rest periods taken. Defendants also control their working conditions—
16 including, among other things, requiring Plaintiffs and Class Members to work from Defendants'
17 office during specific hours. Plaintiffs and Class Members are also required to work a set number of
18 days per week at Defendants' office. As Defendants have control over Plaintiffs' and Class Members'
19 wages, hours, and working conditions, they are improperly classified as independent contractors and
20 instead should be classified as non-exempt employees.

21 27. Defendants fail to pay Plaintiffs and Class Members all minimum and overtime wages
22 earned, in violation of Labor Code §§ 510, 1194, and 1194.2. Plaintiffs and Class Members are
23 required to work overtime hours, but are not paid premium overtime wages of one-and-one-half times
24 the regular rate of pay for all hours worked over eight hours in a workday and over forty hours in a
25 workweek. Furthermore, Plaintiffs and Class Members are not paid for time spent driving specimen
26 samples to various testing sites after leaving the office location. These failures to pay all minimum
27 and overtime wages due and for all hours worked at the proper rates of pay constitute violations of
28 Labor Code §§ 510, 1194, and 1194.2.

28. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiffs and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 4-2001)

29. Plaintiffs incorporate paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

31. Defendants fail to pay premium wages to Plaintiffs and Class Members who are denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Plaintiffs and Class Members are routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but are not paid premium wages of one hour's pay for each missed first or second meal period. When they are able to take a meal period, they are cut short, late or they would have to work through them, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

32. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiffs seek the payment of all unpaid meal period compensation which they and Class Members are owed, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VI.

THIRD CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

33. Plaintiffs incorporate paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 IWC Wage Order 4-2001.

35. Defendants fail to pay premium wages to Plaintiffs and Class Members who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiffs and Class Members are routinely denied and unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but are not paid premium wages of one hour's pay for each missed rest period. When Plaintiffs and Class Members are able to take a rest period, they are oftentimes on-duty as they are under Defendants' control, and would be required to assist customers even if they are on their rest period, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001.

36. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiffs seek the payment of all rest period compensation which they and Class Members are owed, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

37. Plaintiffs incorporate paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

39. Plaintiffs and Class Members are required to incur work-related expenses, including, but not limited to, the use of their personal vehicles, to perform their job, but are not fully reimbursed by Defendants for these expenses, including, but not limited to, mileage, gas, insurance, maintenance, depreciation, and other costs of ownership.

40. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

41. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

PROVISIONS

(LABOR CODE § 226(a), (e))

42. Plaintiffs incorporate paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or

1 her social security number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly
3 rates in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

5 44. Defendants fail to issue Plaintiffs and Class Members any wage statements.

6 45. As a consequence of Defendants' willful conduct in failing to provide Class Members
7 with wage statements, Plaintiffs and Class Members have been injured because they are not able to
8 ascertain any of the information required by Labor Code § 226(a). As a result, Plaintiffs and Class
9 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual
10 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each
11 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and
12 are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

13 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

14 **IX.**

15 **SIXTH CAUSE OF ACTION**

16 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

17 **FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

18 **(LABOR CODE §§ 201-203)**

19 46. Plaintiffs incorporate paragraphs 1 through 45 of this Complaint as though fully set
20 forth herein.

21 47. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
22 due within 72 hours after resignation of employment or the day of termination of employment. Labor
23 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
24 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
25 or an action is commenced. The penalty cannot exceed 30 days of wages.

26 48. Defendants paid Class Members their final wages beyond the time frames set forth in
27 Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and Class Members are not
28 paid all wages due and owing throughout the course of their employment, as detailed above.

1 Consequently, at the time of their separation from employment with Defendants, they are not paid all
2 final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-
3 203 and is alleged on behalf of certain Class Members no longer employed by Defendants.

4 49. More than 30 days have passed since Class Members have left Defendants' employ.

5 50. As a consequence of Defendants' willful conduct in not paying wages owed timely
6 upon separation of employment, Class Members are entitled to up to 30 days' wages as a penalty
7 under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
8 employment.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **X.**

11 **SEVENTH CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 51. Plaintiffs incorporate paragraphs 1 through 50 of this Complaint as though fully set
16 forth herein.

17 52. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf
18 and on behalf of the general public, and on behalf of others similarly situated, bring this claim
19 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged
20 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general
21 public, and all Class Members. Plaintiffs seek to enforce important rights affecting the public interest
22 within the meaning of Code of Civil Procedure § 1021.5.

23 53. Plaintiffs are each a "person" within the meaning of Business & Professions Code §
24 17204, and therefore have standing to bring this cause of action for injunctive relief, restitution, and
25 other appropriate equitable relief.

26 54. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.

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1 55. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages and expense reimbursement due are fundamental public policies of this
3 State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
4 enforce vigorously minimum labor standards, to ensure that employees are not required or permitted
5 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
6 employees from competitors who lower their costs by failing to comply with minimum labor
7 standards.

8 56. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
10 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
11 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,
12 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
13 guaranteed to all employees under law.

14 57. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
15 §17200 *et seq.* of the Business & Professions Code.

16 58. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
17 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
18 17200 *et seq.* of the Business & Professions Code.

19 59. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
20 similarly situated have been damaged in a sum as may be proven.

21 60. Unless restrained by this Court, Defendants will continue to engage in the unlawful
22 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
23 should make such orders or judgments, including the appointment of a receiver, as may be necessary
24 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
25 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
26 to, disgorgement of profits which may be necessary to restore Plaintiffs and all Class Members to the
27 money Defendants have unlawfully failed to pay.

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XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 226.8, 510, 512, 1194, AND 2802 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 246(i), AND
558**

61. Plaintiffs incorporate paragraphs 1 through 60 of this Complaint as though fully set forth herein.

62. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.* In addition, Defendants fails to provide Plaintiffs and Aggrieved Employees with wage statements or a separate document at the time of the payment of wages that set forth all accrued sick leave, in violation of Labor Code § 246(i).

63. For each such violation, Plaintiffs and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 226.8, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3, 246(i), and 558.

64. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

65. On January 25, 2023, Plaintiffs sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of January 25, 2023. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

XII.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 1194 and 1194.2, respectively, in the amount of all unpaid wages due to Plaintiffs and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code § 226.7;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiffs and Class Members;
6. For reimbursement of all expenses incurred by Plaintiffs and Class Members pursuant to Labor Code § 2802;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class Members;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other aggrieved employees;
9. An award of prejudgment and post-judgment interest;
10. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), 2802, and other applicable law;
11. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), 2802, and other applicable law; and
12. Such other and further relief as this Court may deem just and proper.

1 Dated: April 10, 2023

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: Daniel F. Gaines
5 DANIEL F. GAINES
6 ALEX P. KATOFISKY
7 Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

8 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

9 Dated: April 10, 2023

Respectfully submitted,

10 GAINES & GAINES
11 A Professional Law Corporation

12 By: Daniel F. Gaines
13 DANIEL F. GAINES
14 ALEX P. KATOFISKY
15 Attorney for Plaintiffs
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