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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GARY ARAUJO and MARYSABEL PIZZARO, individually, and on behalf of the State of California and other aggrieved persons,

Plaintiffs,

v.

FLOW HEALTH SERVICES LLC, a Delaware limited liability company, and DOES 1 through 10, inclusive,

Defendant.

Case No.: 23STCV16834

PAGA REPRESENTATIVE ACTION COMPLAINT:

1. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]

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Plaintiffs GARY ARAUJO and MARYSABEL PIZARRO ("Plaintiffs"), on information and belief, allege as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiffs bring this action individually, and on behalf of the State of California and other aggrieved persons, against Defendant Flow Health Services LLC, and DOES 1 through 10 (collectively referred to as "Defendants") for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq*. ("PAGA") stemming from Defendant's failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.

2. For over 50 years, California's courts and Legislature have recognized that this State's wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that employees are promptly paid the minimum/overtime wages that the Legislature has required for employees. So fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes—since Plaintiffs are not seeking general and/or special damages, restitution, or other damages other than civil penalties—California has enacted PAGA to permit an individual to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

3. All California employees during the relevant period who are or were harmed by Defendant's illegal practices are "Aggrieved Employees." The Aggrieved Employees worked for Defendant as hourly-paid or non-exempt employees within the applicable period.

4. Plaintiffs bring this action against Defendant seeking only to recover penalties on behalf of themselves individually, on behalf of all Aggrieved Employees who worked for Defendant, and on behalf of the State of California. Plaintiffs do not seek to recover anything other

than penalties as permitted by California Labor Code Section 2699 at this time. To the extent that statutory violations are mentioned for wage violations, Plaintiffs do not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for themselves and all Aggrieved Employees as permitted by the PAGA.

5. Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

6. On information and belief, Defendant was on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify its unlawful practices. Defendant's violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendant was and is legally responsible for all of the unlawful conduct, patterns, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiffs and the Aggrieved Employees. Further, Defendant is responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

THE PARTIES

A. Plaintiffs

8. Plaintiff Gary Araujo is a resident of Los Angeles County, California who worked for Defendant in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately January 2022 to August 2022.

9. Plaintiff Marysabel Pizarro worked for Defendant in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately November 2021 to September 2022.

B. Defendant

10. Plaintiffs are informed and believe, and based upon that information and belief allege, that Defendant Flow Health Services LLC is, and at all times herein mentioned, was:

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(a) A business entity conducting business in numerous counties throughout the State of California, including Los Angeles County; and,

(b) The former employer of Plaintiffs, and the current and/or former employer of Aggrieved Employees, because Defendant Flow Health Services LLC suffered and permitted Plaintiffs and Aggrieved Employees to work; and/or controlled their wages, hours, or working conditions; and or engaged Plaintiffs and Aggrieved Employees, thereby creating a common law employment relationship.

11. Plaintiffs do not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants were in some manner legally responsible for the damages suffered by Plaintiffs and the Aggrieved Employees as alleged herein. Plaintiffs will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiffs and the Aggrieved Employees in the State of California.

13. Plaintiffs are informed and believe and thereon allege that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the other employees and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believe and thereon allege that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships

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alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Plaintiff Gary Araujo worked for Defendant Flow Health Services LLC in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately January 2022 to August 2022. At all times, Defendant paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

15. Plaintiff Marysabel Pizarro worked for Defendant Flow Health Services LLC in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately November 2021 to September 2022. At all times, Defendant paid Plaintiff an hourly wage and classified her as non-exempt from overtime.

16. Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

17. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

18. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

19. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

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20. Throughout the statutory period, Defendant maintained a pattern and practice of not paying Plaintiffs and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendant required Plaintiffs and the Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring Plaintiffs and the Aggrieved Employees to perform work during uncompensated meal periods and/or requiring Plaintiffs and the Aggrieved Employees to perform work after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

B. <u>Failure to Provide Meal Periods</u>

21. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the fifth hour of work in a workday, and to allow employees to take their second 30-minute meal period no later than the end of the tenth hour of work in a workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with a required meal period(s).

22. Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Defendant also continued to assert control over Plaintiffs and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided as required by law. Defendant also never informed Plaintiffs of their right to, nor permitted them to take, a second meal period when Plaintiffs worked at least ten hours of work in a workday and otherwise unlawfully pressured them to waive such breaks. Accordingly, Defendant's pattern and practice was not to provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

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23. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

C. Failure to Authorize and Permit Rest Breaks

24. Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

25. Throughout the statutory period, Defendant has wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take legally compliant rest periods in a manner required by law. Defendant also regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), and without properly compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, among other things, Defendant continued to assert control over Plaintiffs and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, and by denying Plaintiffs and the Aggrieved Employees permission to take a rest period under the conditions required by law. Accordingly, Defendant's pattern and practice was to not authorize and permit Plaintiffs and the Aggrieved Employees to take rest periods in compliance with California law.

26. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not authorized and permitted to take all required rest periods. Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

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D. Failure to Pay All Earned Wages Twice Per Month

27. Based on its failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

28. Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages not paid, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods

29. Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

30. Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

31. Defendant's failure to provide and maintain records required by the California Labor Code and applicable IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the

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Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

F. **<u>Failure to Timely Pay All Wages at Termination</u>**

32. Labor Code §§ 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.

33. Within the applicable period, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

34. Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

35. Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from

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Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

G. Failure to Furnish Accurate Itemized Wage Statements

36. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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 the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

37. The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Labor Code § 226(e)(1).)

38. Throughout the statutory period, Defendant failed to furnish Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Because Defendant violated Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs and similarly Aggrieved

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Employees are entitled to recover damages from Defendant including the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) dollars per employee, or as otherwise permitted by PAGA based upon all bases of liability.

H. <u>Failure to Indemnify for Necessary Expenditures</u>

39. Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the period applicable to this cause of action, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant. Plaintiffs and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, work attire and cell phone expenses. Plaintiffs and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendant, but Defendant failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

40. As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiffs and the Aggrieved Employees for necessary business expenditures.

<u>FIRST CAUSE OF ACTION</u>

(By All Plaintiffs Against All Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

41. Plaintiffs incorporate by reference and re-allege all preceding paragraphs as though fully set forth herein.

42. At all times herein mentioned, Defendant was subject to the Labor Code of the State of California and the applicable IWC Orders.

43. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards,

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agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself and other current or former employees pursuant to the procedures specified in Section 2699.3."

44. Plaintiffs Gary Araujo and Marysabel Pizzaro gave written notice by online filing pursuant to California Labor Code § 2699.3 to the Labor and Workforce Development Agency and by certified mail to Defendant of the specific provisions of the Labor Code that Defendant has violated against Plaintiffs and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiffs also paid the filing fee. Plaintiffs' PAGA case number is LWDA-CM-936757-23 (GARY ARAUJO and MARYSABEL PIZZARO v. FLOW HEALTH SERVICES LLC). The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendant's Labor Code violations discussed in the notice. Plaintiffs hereby commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

45. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties individually, on behalf of the State of California, and on behalf of similarly Aggrieved Employees of Defendant. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

46. In addition, Plaintiffs seek an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiffs, individually, and on behalf of all similarly aggrieved employees, pray for relief and judgment against Defendant, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendant violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned

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wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, failing to indemnify for necessary expenditures;

2. An award of civil penalties on behalf of themselves and all similarly aggrieved employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: July 18, 2023

WILSHIRE LAW FIRM

By: ______________________________
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