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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

APRIL SANCHEZ, an individual, on behalf
of herself and others similarly situated

PLAINTIFF,

v.

DESIRE HOME CARE, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CVRI2303291

[Case Assigned for All Purposes to Hon.
Harold W. Hopp in Dept. 1]

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Failure to Provide Employment Records Violation of Labor Code §§ 226 and 1198.5
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff APRIL SANCHEZ, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant DESIRE HOME CARE, INC. (“Defendant”) and each of them, as
5 follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class Action and Representative Action, pursuant to Code of Civil
9 Procedure § 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined
10 as:

11 All persons who are employed or have been employed as a non-
12 exempt employee by Desire Home Care, Inc., in the State of
13 California since four (4) years prior to the filing of this action to the
present. (“Proposed Class”)

14 2. From at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
16 their right to take compliant meal periods by way of a lawful policy and requiring Proposed Class
17 Members within the State of California, including Plaintiff, to work at least five (5) hours without
18 a meal period and failing to pay such employees one (1) hour of pay at the employees’ regular rate
19 of compensation for each workday that the compliant meal period is not provided or provided after
20 five (5) hours, as required by California state wage and hour laws. Further, Defendant also had a
21 consistent policy of paying meal period premiums at the base rate and not the blended rate in
22 violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7 and 512.

23 3. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
25 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
26 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
27 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
28 of pay at the employee’s regular rate of compensation for each workday that the rest period was

1 not provided, as required by California state wage and hour laws. As discussed above, *Ferra*
2 requires the rest period premium payments must include the hourly value of any nondiscretionary
3 earnings (such as nondiscretionary bonuses), and cannot simply be paid at an employee's base
4 hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate
5 and not the blended rate when rest periods are provided, in violation of Labor Code § 226.7.

6 4. For at least four (4) years prior to the filing of this action and continuing to the
7 present, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their
8 personal cell phones as well as purchased supplies for business purposes. Defendant required that
9 Plaintiff and the Proposed Class be available by cell phone and answer/use their cell phones while
10 working. Additionally, Plaintiff and the Proposed Class were required to purchase supplies for the
11 office such as toilet paper, soap, fans, and holiday materials, and this was not reimbursed by
12 Defendant. These cell phones and supplies were not provided by Defendant, and Defendant failed
13 to reimburse Plaintiff and the Proposed Class for costs associated with using these personal cell
14 phones and supplies.

15 5. For at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for their mileage.
17 Plaintiff and the Proposed Class are required to work without being reimbursed for their business
18 expenses. Plaintiff and the Proposed Class used their own vehicles to travel from job site to job
19 site. Plaintiff and the Proposed Class have not been compensated for the cost and maintenance of
20 their personal vehicles in order to perform their job duties during the relevant time period.

21 6. For at least one (1) year prior to the filing of this action continuing to the present,
22 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 5-2001
23 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized
24 wage statements in writing showing the total hours worked at each applicable hourly rate in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by
26 Plaintiff and the members of the Proposed Class.

27 7. For at least three (3) years prior to the filing of this action continuing to the present,
28 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and

1 the Proposed Class.

2 8. Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code
3 §§226 and 1198.5. Plaintiff requested the right to review her personnel file and <<ppronoun>>
4 pay records by sending a letter to Defendant. Defendant refused to provide the requested
5 documentation in violation of the statutes. Plaintiff is seeking penalties and injunctive relief.

6 9. Plaintiff, on behalf of herself and all Proposed Class members brings this action
7 pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 512, 1198.5, and 2802; Wage Order
8 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking meal and rest period
9 penalties, unreimbursed expenses, accurate itemized wage statements, other penalties, injunctive
10 and other equitable relief, and reasonable attorneys' fees and costs.

11 10. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
12 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
13 all benefits Defendant enjoyed from its unlawful conduct as described herein.

14 11. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
15 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
16 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
17 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved
18 employees presently or formerly employed by Defendant during the liability period as defined in
19 her PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to Labor Code
20 §2699, et seq. seeking penalties for Defendant's failure to provide lawful meal and rest periods,
21 failure to reimburse business-related expenses, failure to provide accurate itemized wage
22 statements, and failure to pay all wages due at the time of termination. Plaintiff also brings a claim
23 on behalf of herself only for a violation of Labor Code §§ 226 and 1198.5.

24 **II.**

25 **JURISDICTION AND VENUE**

26 12. This Court has subject matter jurisdiction over all causes of action asserted herein
27 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
28 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive

1 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
2 State of California or is subject to adjudication in the courts of the State of California.

3 13. This Court has personal jurisdiction over Defendant because Defendant has caused
4 injuries in the County of Riverside and the State of California through their acts, and by their
5 violation of the California Labor Code, California state common law, and California Business &
6 Professions Code § 17200, *et seq.*

7 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
8 Civil Procedure § 395. Defendant operates within California and does business within Riverside
9 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
10 Members within the State of California and the county of Riverside.

11 15. This case should be classified as complex according to Rule 3.400 of the California
12 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
13 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
14 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
15 require substantial post judgment judicial supervision.

16 16. Plaintiff files this amended complaint adding a claim for penalties under Labor
17 Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

18 **III.**

19 **PARTIES**

20 **A. PLAINTIFF**

21 17. Plaintiff APRIL SANCHEZ is a resident of California.

22 18. Plaintiff and all Proposed Class members, were regularly required to:

- 23 a. Work without being provided meal periods;
- 24 b. Work without being provided rest periods;
- 25 c. Work without being reimbursed for their out of pocket expenses; and,
- 26 d. Work without being provided accurate itemized wage statements;

27 19. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
28 for wages at the termination of their employment with Defendant.

1 20. Additionally, as to Plaintiff only, she requested copies or an opportunity to copy
2 her personnel file and her pay records. Defendant refused to comply with this request in violation
3 of Labor Code §§ 226 and 1198.5.

4 21. As a result of this conduct, Defendant has engaged in unfair competition and
5 unlawful business practices.

6 22. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA
7 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
8 §2699(c).)

9 **B. DEFENDANTS**

10 23. Defendant DESIRE HOME CARE, INC. is believed to be a California corporation
11 operating within the State of California. Defendant’s corporate address is believed to be 3742
12 Tibbetts St., Suite 202, Riverside, CA 92506. Upon information and belief, Defendant employed
13 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
14 and does business throughout the State of California.

15 24. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
18 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
19 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
20 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
21 capacities of the Defendants designated hereinafter as DOES when such identities become known.

22 25. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
25 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
26 employer and/or joint employer of Plaintiff and the Proposed Class members.

27 26. Furthermore, Defendants acted in all respects as the employers or joint employers
28 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or

1 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
2 engaged, thereby creating a common law employment relationship, with the Proposed Class.
3 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

4 **IV.**

5 **FACTUAL BACKGROUND**

6 27. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
7 classified as non-exempt employees by Defendant. Defendant hires employees who work as
8 hourly employees who are paid on an hourly basis.

9 28. Upon information and belief, Plaintiff and the Proposed Class are covered by
10 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
11 Code of Regs. § 11050).

12 29. On a regular and consistent basis, Plaintiff and all Proposed Class members have
13 been forced by Defendant to work over five (5) hours in one day without being provided a thirty
14 (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at the regular
15 rate of compensation for each workday that a compliant meal period was not provided or provided
16 after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare
17 Commission Wage Orders. Defendant has had a consistent policy of paying meal period premiums
18 at the base rate and not the blended rate when meal periods premiums are provided, in violation of
19 *Ferra* and Labor Code §§ 226.7 and 512. Additionally, Defendant failed to inform Plaintiff and
20 the Proposed Class of their right to take meal periods by way of a lawful policy.

21 30. On a regular and consistent basis, Plaintiff and the Proposed Class have been
22 required to work four hour increments (or major fractions thereof) without being provided with a
23 ten (10) minute rest period. Defendant also failed to pay such employees one (1) hour of pay at the
24 employee's regular rate of compensation for each work day that the compliant rest period was not
25 provided, as required by California state wage and hour laws. Defendant has had a consistent
26 policy of paying rest period premiums at the base rate and not the blended rate, when rest break
27 premiums are provided, as required. Additionally, Defendant failed to inform Plaintiff and the
28 Proposed Class of their right to take rest periods by way of a lawful policy.

31. Defendant willfully failed to provide Plaintiff with her personnel file and pay data after a written request. Plaintiff requested copies or an opportunity to copy her personnel file and her pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226 and 1198.5.

32. On a regular and consistent basis, Plaintiff and the Proposed Class have not been properly reimbursed expenses associated with the cost of mileage, personal cell phone use, and supplies necessary for the completion of their job duties.

33. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 5-2001(7) and Labor Code § 226(a) by failing to maintain time records showing total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for Plaintiff and the Proposed Class.

34. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Class members' rights.

35. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by Desire Home Care, Inc., in the State of California since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

37. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

38. This action has been brought and may properly be maintained as a class action

under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

39. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

40. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

41. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods and by failing to provide required meal periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5 - 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take rest periods and failing to provide required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 5-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost of mileage, personal cell phone use, and supplies;

1 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 5-2001
2 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11050 by failing to
3 furnish accurate itemized wage statements that accurately show total hours worked, all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate, for Plaintiff and the members of the Proposed Class;

6 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
7 compensation due and owing at the time that any Proposed Class member's employment with
8 Defendant terminated;

9 f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
10 Code by engaging in the acts previously alleged; and

11 g. Whether Plaintiff and the members of the Proposed Class are entitled to
12 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

13 **C. TYPICALITY**

14 42. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
15 all members of the Proposed Class sustained injuries and damages arising out of and caused by
16 Defendant's common course of conduct in violation of laws, regulations that have the force and
17 effect of law, and statutes as alleged herein.

18 **D. ADEQUACY OF REPRESENTATION**

19 43. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the proposed Class.

21 44. Counsel who represent Plaintiff and the Proposed Class are competent and
22 experienced in litigating large employment class actions.

23 **E. SUPERIORITY OF CLASS ACTION**

24 45. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
26 practicable, and questions of law and fact common to the Proposed Class predominate over any
27 questions affecting only individual members of the Proposed Class. Each member of the Proposed
28 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or

1 practice of failing of failing to provide meal and rest periods, failing to reimburse expenses, failing
2 to provide accurate itemized wage statements, and failing to pay all wages upon resignation or
3 termination.

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

8 **VI.**

9 **FIRST CAUSE OF ACTION**

10 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

11 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

12 **LABOR CODE § 226.7 AND LABOR CODE § 512**

13 47. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
14 reference all previous paragraphs.

15 48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
16 compensation for each meal period the employer fails to provide. Employees are entitled to a first
17 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
18 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
19 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
20 no more than ten (10) hours of work.

21 49. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class
22 of these rights.

23 50. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
24 Defendant failed to provide Plaintiff and the Proposed Class with complaint meal periods of not
25 less than thirty (30) minutes as required by the Labor Code during the relevant time period. If
26 Plaintiff and the Proposed Class were able to find some time to eat, they were frequently
27 interrupted, missed, or late.

28 51. Additionally, Defendant has had a consistent policy of failing to pay Plaintiff and

1 the Proposed Class one (1) hour of pay at the employees' regular rate of compensation for each
2 workday that the compliant meal period was not provided. Very recently, on July 15, 2021, in
3 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
4 calculating the one extra hour of premium pay that employees are owed if an employer fails to
5 provide a compliant meal period or rest break. Specifically, the Court held that those premium
6 payments must include the hourly value of any nondiscretionary earnings (such as a
7 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here,
8 when meal period premiums are provided, Defendant has had a consistent policy of paying meal
9 period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and
10 512.

11 52. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in
12 an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at
13 trial.

14 VII.

15 SECOND CAUSE OF ACTION

16 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

17 FAILURE TO ALLOW REST PERIODS PURSUANT TO

18 LABOR CODE § 226.7

19 53. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
20 reference all previous paragraphs.

21 54. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
22 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
23 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
24 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

25 55. Plaintiff and the Class consistently worked shifts with no rest breaks, and Defendant
26 failed to maintain an accurate policy advising Plaintiff and the Class of these rest breaks and failed
27 to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by
28 the Labor Code during the relevant time period. Rest breaks were frequently missed, interrupted,

1 or late, as Plaintiff and the Proposed Class had a heavy workload and were not always able to take
2 a rest break.

3 56. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff
4 and the Proposed Class with a second rest period despite regularly requiring Plaintiff and the
5 Proposed Class work over six (6) hours.

6 57. As a result, Defendant failed to provide Plaintiff and the Proposed Class with
7 compliant rest periods.

8 58. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour
9 of wages at the regular rate of compensation for each compliant rest period that was not provided
10 as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium
11 payments must include the hourly value of any nondiscretionary earnings (such as a
12 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with
13 meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying
14 rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

15 59. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
16 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
17 at trial.

18 **VIII.**

19 **THIRD CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

21 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

22 **LABOR CODE § 2802**

23 60. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
24 reference all previous paragraphs.

25 61. Labor Code § 2802 requires employers to indemnify employees for all necessary
26 expenditures incurred by employees in the discharge of their duties.

27 62. Defendants have failed to reimburse Plaintiff and the Proposed Class for the cost
28 of using their personal cell phones and supplies that were not provided by Defendant but were

1 necessary for the performance of Plaintiff and the Proposed Class's job duties. Defendant required
2 Plaintiff and all Proposed Class members to use their own cell phones to perform and complete
3 their job duties. Specifically, Defendant required that Plaintiff and the Proposed Class be available
4 by cell phone and answer/use their cell phones while working. Defendant also required that if the
5 internet in the office was out, employees would have to use their own personal cell phones as a
6 wi-fi hotspot. These cell phones and supplies were not provided by Defendant and Defendant
7 failed to reimburse Plaintiff and the Proposed Class for the costs of regular and consistent cell
8 phone usage and the costs of supplies purchased for the office, despite the fact that these
9 expenditures were necessary for business related purposes.

10 63. Plaintiff and the Proposed Class were required to purchase supplies for the office
11 such as toilet paper, soap, fans, as well as holiday materials, and this was not reimbursed by
12 Defendant. Defendant also required Plaintiff and the Class to use their own personal vehicles for
13 work purposes and these costs were not reimbursed by Defendant.

14 64. Defendant also required Plaintiff and the Proposed Class to travel between job sites
15 to perform work tasks. Because Defendant did not provide buses or other transportation to workers
16 so that they could travel from job sites to job sites in the middle of their shifts, Plaintiff and the
17 Proposed Class used their own vehicles to travel from job site to job site. Defendant did not
18 reimburse Plaintiff and the Proposed Class for their vehicle use for travel between Defendant's job
19 sites during the course of a work shift, in violation of California law. Plaintiff would sometimes
20 have to drive up to 200 miles round trip every day for Defendant without being reimbursed for her
21 vehicle use/mileage.

22 65. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
23 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
24 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF herself**

4 **VIOLATION OF LABOR CODE §§ 226 and 1198.5**

5 66. Plaintiff, on behalf of herself only, realleges and incorporates by reference all
6 previous paragraphs.

7 67. Labor Code § 226(a) states:

8 Every employer shall, semimonthly or at the time of each payment
9 of wages, furnish each of his or her employees, either as a detachable
10 part of the check, draft, or voucher paying the employee's wages, or
11 separately when wages are paid by personal check or cash, an
12 accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee, except for any
14 employee whose compensation is solely based on a salary and who
15 is exempt from payment of overtime under subdivision (a) of
16 Section 515 or any applicable order of the Industrial Welfare
17 Commission, (3) the number of piece-rate units earned and any
18 applicable piece rate if the employee is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written
20 orders of the employee may be aggregated and shown as one item,
21 (5) net wages earned, (6) the inclusive dates of the period for which
22 the employee is paid, (7) the name of the employee and only the last
23 four digits of his or her social security number or an employee
24 identification number other than a social security number, (8) the
25 name and address of the legal entity that is the employer and, if the
26 employer is a farm labor contractor, as defined in subdivision (b) of
27 Section 1682, the name and address of the legal entity that secured
28 the services of 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 and, beginning July 1,
2013, if the employer is a temporary services employer as defined
in Section 201.3, the rate of pay and the total hours worked for each
temporary services assignment. The deductions made from payment
of wages shall be recorded in ink or other indelible form, properly
dated, showing the month, day, and year, and a copy of the statement
and the record of the deductions shall be kept on file by the employer
for at least three years at the place of employment or at a central
location within the State of California. For purposes of this
subdivision, "copy" includes a duplicate of the itemized statement
provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

26 68. Labor Code § 226(b) states:

27 An employer that is required by this code or any regulation adopted
28 pursuant to this code to keep the information required by subdivision
(a) shall afford current and former employees the right to inspect or
copy records pertaining to their employment, upon reasonable

request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

69. Labor Code § 226(c) states:

An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

70. Labor Code § 1198.5(a) states: "Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

71. Labor Code § 1198.5(b)(1) states:

The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

72. On April 11, 2023, Plaintiff mailed to Defendant her first written request to her employer to copy or to receive a copy of her personnel file and payroll records. The letter cited Labor Code §§ 226 and 1198.5. Defendant returned an unsigned certified mail receipt on April 14, 2023.

73. Defendant did not provide the documentation requested by Plaintiff within the statutory time frames or at all causing Plaintiff to mail a second written request to Defendant on May 15, 2023. Defendant returned an unsigned certified mail receipt on May 18, 2023.

74. Defendant did not provide the documentation requested by Plaintiff in her second written request within the statutory time frames or at all.

75. Labor Code § 226(f) provides that “[a] failure by an employer to permit a current or former employee to inspect or copy records within the. . .” statutory time frame “. . . entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

76. Additionally, Labor Code §226(h) permits an employee to bring an action for injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an award of costs and reasonable attorney's fees.

77. Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection or fails to permit an employee to copy personnel records within the times specified, the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

78. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

79. As such, Defendant has violated Labor Code §§ 226 and 1198.5 and Plaintiff is entitled to production of the documents requested, penalties, and attorney's fees and costs.

X.

FIFTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

80. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

81. California Labor Code § 226(a) requires employers to issue wage statements that accurately report total hours worked, and the corresponding number of hours worked at each

1 hourly rate. (Labor Code §§ 226(a)(2) and (9).)

2 82. As a result of Defendant's failure to pay wages as described above, Defendant has
3 failed to include the appropriate rates of pay and the accurate hours worked on itemized wage
4 statements for Plaintiff and the Proposed Class.

5 83. IWC Wage Orders 5-2001(7), 5-2000(7), 5-1998(7) require defendants to maintain
6 time records showing, among others, when the employee begins and ends each work period, meal
7 periods, split shift intervals and total daily hours worked in an itemized wage statements, and must
8 show all deductions from payment of wages, the number of piece-rate units earned and any
9 applicable piece rate if the employee is paid on a piece-rate, and accurately report total hours
10 worked by Plaintiff and the members of the proposed Class. Defendant failed to keep accurate
11 records of the total daily hours worked.

12 84. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the
13 time of each payment of wages, furnish each of his or her employees, an accurate itemized
14 statement in writing showing the total hours worked by the employee. Plaintiff and the Class are
15 issued wage statements that do not include the total hours worked by the employee.

16 85. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
17 time of each payment of wages, furnish each of his or her employees, an accurate itemized
18 statement in writing showing all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
20 Class are issued wage statements that do not include all applicable hourly rates in effect during the
21 pay period and the corresponding number of hours worked at a each hourly rate by the employee.

22 86. Defendants' failure to provide accurate itemized wages statements according to
23 Labor Code § 226(a) was all done on a regular and consistent basis.

24 87. An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
27 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
28 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and

1 reasonable attorneys' fees.

2 **XI.**

3 **SIXTH CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

5 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

6 88. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

8 89. Numerous members of the Proposed Class including the Plaintiff are no longer
9 employed by Defendant. They were either fired or quit Defendant's employ.

10 90. Defendant's failure to pay wages, as alleged above was willful in that Defendant
11 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
12 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
13 penalty until paid for a period of up to thirty (30) days from the time they were due.

14 91. Defendant has failed to pay Plaintiff and others a sum certain at the time of
15 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
16 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
17 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
18 Members' daily wage multiplied by thirty (30) days.

19 **XII.**

20 **SEVENTH CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

22 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

23 92. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
24 reference all previous paragraphs.

25 93. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
26 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
27 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
28 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general

1 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
2 interest within the meaning of Code of Civil Procedure § 1021.5.

3 94. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
4 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
5 appropriate equitable relief.

6 95. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
7 practices.

8 96. California’s wage and hour laws express fundamental public policies. Providing
9 employees with proper wages and compensation are fundamental public policies of this State and
10 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
11 vigorously minimum labor standards, to ensure that employees are not required or permitted to
12 work under substandard and unlawful conditions, and to protect law-abiding employers and their
13 employees from competitors who lower their costs by failing to comply with minimum labor
14 standards.

15 97. Defendant has violated statutes and public policies as alleged herein. Through the
16 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 98. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
22 violation of § 17200, *et seq.* of the Business & Professions Code.

23 99. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
25 § 17200, *et seq.* of the Business & Professions Code.

26 100. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
27 others similarly situated have been damaged in a sum as may be proven.

28 101. Unless restrained, Defendant will continue to engage in the unlawful conduct as

1 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
2 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
3 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
4 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
5 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
6 proposed Class the money Defendant has unlawfully failed to pay.

7 **XIII.**

8 **EIGHTH CAUSE OF ACTION**

9 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

10 102. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
11 incorporates by reference all previous paragraphs.

12 103. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
13 seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§
14 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 5-2001; and California Code of
15 Regulations, Title 8, Section 11050, which call for civil penalties.

16 104. In addition to the meal period, rest period, reimbursement, itemized wage
17 statement, and penalty claims alleged in detail above, Plaintiff also alleges a violation of Labor
18 Code §§ 226 and 1198.5 as the basis for a PAGA claim on behalf of herself only. Defendant refused
19 to provide Plaintiff's personnel file when requested by Plaintiff on multiple occasions.

20 105. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
21 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
22 present, Defendant has violated Labor Code §§ 226 and 1198.5 with respect to Plaintiff.

23 106. On April 11, 2023, Plaintiff mailed to Defendant her first written request to her
24 employer to copy or to receive a copy of her personnel file and payroll records. The letter cited
25 Labor Code §§ 226 and 1198.5. Plaintiff received an unsigned certified mail receipt on April 17,
26 2023.

27 107. Defendant did not provide the documentation requested by Plaintiff within the
28 statutory time frames causing Plaintiff to mail a second written request to Defendant on May 15,

2023. Again, on May 22, 2023, Plaintiff received an unsigned returned certified mail receipt from Defendant.

108. Defendant did not provide the documentation requested by Plaintiff in her second written request.

109. Labor Code § 226(f) provides that “[a] failure by an employer to permit a current or former employee to inspect or copy records within the. . .” statutory time frame “. . . entitles the current or former employee of the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

110. Additionally, Labor Code §226(h) permits an employee to bring an action for injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an award of costs and reasonable attorney’s fees.

111. Labor Code § 1198.5(a) states: “Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

112. Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection or fails to permit an employee to copy personnel records within the times specified, the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

113. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney’s fees in such an action.

114. As a result of the acts alleged above, Plaintiff, on behalf of herself only, seeks penalties under Labor Code section 2699, *et seq.* because of Defendant’s violation of Labor Code §§ 226 and 1198.5, for which a civil penalty applies under PAGA.

115. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant’s violation of Labor Code §§ 201-203, 226, 226(a), 226.7, 512, 1198.5, 2802, and Wage Order 5-2001, which call for civil penalties.

116. For each such penalty, Plaintiff and the aggrieved employees are entitled to

penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

117. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

118. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to each of the Defendant's entity address, as proscribed by the Code on June 27, 2023, describing Defendant's conduct in violation of Labor Code §§ 201-203, 226, 226(a), 226.7, 512, 1198.5, 2802, and IWC Wage Order 5-2001. (see Exhibit "1.") Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

119. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each rest period and/or meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed out of pocket expenses as a requirement of employment;

3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of 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 exceeding

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

an aggregate penalty of four thousand dollars (\$4,000);

4. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. On behalf of herself only, Plaintiff requests penalties pursuant to Labor Code §§ 226(f) and 1198.5(k) and injunctive relief pursuant to Labor Code §§ 226(h) and 1198.5(k) for violation of Labor Code §§ 226 and 1198.5;

6. An award of prejudgment and post judgment interest;

7. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 512, 1198.5, 2802, and IWC 5-2001;

8. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 512, 1198.5, 2802, and Wage Order 5-2001;

10. An award providing for payment of costs of suit;

11. An award of attorneys' fees; and

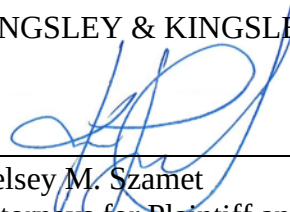
12. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: September 6, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

June 27, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Desire Home Care, Inc.
3742 Tibbetts St., # 202
Riverside, CA 92506
Via Certified Mailing # 7022 3330 0002 1335 6604

Re: April Sanchez v. Desire Home Care, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents April Sanchez (“Plaintiff”) and a proposed group of current and former employees working for Desire Home Care, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by Desire Home Care, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 27, 2023

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Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees uninterrupted meal periods within the first five hours of each shift; (2) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred after the first five hours of each shift; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift. If Plaintiff and the aggrieved employees were able to find some time to eat, they were frequently interrupted, missed, or late.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Rest breaks were consistently missed, interrupted, or late, as Plaintiff and the aggrieved employees had a heavy workload and were not able to take compliant rest breaks. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Further, Plaintiff and all aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 27, 2023

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though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and supplies for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working. Defendant also required that if the internet in the office was out, employees would have to use their own phones as a wi-fi hotspot. These cell phones and supplies were not provided by Defendant, and Defendant failed to reimburse

Defendant also required Plaintiff and all aggrieved employees to purchase supplies for the office such as toilet paper, soap, a fan, as well as holiday supplies, and this was necessary to perform their job duties. Plaintiff and the aggrieved employees for the costs of such supplies.

Defendant also required Plaintiff and all aggrieved employees to travel between job sites to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from job sites to job sites in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel from job site to job site. Defendant did not reimburse Plaintiff and the aggrieved employees for their vehicle use for travel between Defendant's job sites during the course of a work shift, in violation of California law. Plaintiff would sometimes have to drive up to 200 miles round trip every day for Defendant without being reimbursed for her vehicle use/mileage.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 27, 2023

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who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203. As such, Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiff to pursue PAGA penalties for violations not personally suffered.

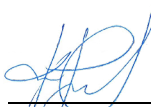
Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226 and 1198.5.

Further, under Labor Code § 2699.3(c)(2)(A), Defendant may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 512, 1198.5, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

[KMS/tg]

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, , Los Angeles, CA90010-2513

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

April Sanchez

Plaintiff/Aggrieved Employee Occupation *

Quality Care Coordinator

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Desire Home Care, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

3742 Tibbetts St., #202	Riverside
Employer State * California	Employer Zip/Postal Code * 92506
Employer Industry * Other	Employer Industry for "Other" * Healthcare

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *
50

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Provide Details of Other Violation *

Violation of Labor Code Sections 226 & 1198.5

Other(Maybe Multiple)

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED] ▼

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *** PAGA Letter –... Care Inc..pdf**Other Attachment – (if any) (must be a .pdf)** No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue 6/27/2023 9:31 AM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

6/27/2023

LWDA Case No. LWDA-CM-964626-23

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : April Sanchez

Employer: Desire Home Care, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate Attorneys General Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7C6b4382c1276241c201dc08db772be975%7C121a7875db4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638234802790414997%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=2T%2BJmEjI4n%2FtwvMD1dNyu4t2%2FYShFqYXTt8slvi3TZA%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate%20Attorneys%20General%20Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7C6b4382c1276241c201dc08db772be975%7C121a7875db4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638234802790414997%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=2T%2BJmEjI4n%2FtwvMD1dNyu4t2%2FYShFqYXTt8slvi3TZA%3D&reserved=0)

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue 6/27/2023 9:31 AM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

Thank you for your payment.

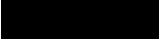
Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-964626-23

Order Number: ORD-000234483

Total: \$75.00

Card Type: 

Date: 6/27/2023

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436