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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, UNLIMITED JURISDICTION

MARK SUMARIA, an individual;  
ZAYDEE MERCADO, an individual, as  
individuals and on behalf of others  
similarly situated,

Plaintiffs,

vs.

SANTE HEALTH PARTNERS, LLC, a  
Delaware limited liability company;  
CATHERINE LLAVANES, an individual,  
and DOES 1 to 50, inclusive,

Defendants.

CASE NO. 23STCV26286

**COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF:**

1. FAILURE TO REIMBURSE  
EXPENSES
2. FAILURE TO PROVIDE  
ACCURATE ITEMIZED WAGE  
STATEMENTS
3. FAILURE TO PAY ALL WAGES  
UPON SEPARATION
4. UNFAIR COMPETITION
5. REMEDIES UNDER THE PRIVATE  
ATTORNEY GENERAL ACT

**DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. Plaintiffs MARK SUMARIA (hereinafter “Sumaria”) and ZAYDEE MERCADO  
3 (hereinafter “Mercado”) (collectively “Plaintiffs”) hereby submit their Complaint (“Complaint”)  
4 for Damages and Equitable Relief against Defendants SANTE HEALTH PARTNERS, LLC  
5 (“Sante”), a Delaware limited liability company, CATHERINE LLAVANES, (“Llavaness”) an  
6 individual, and DOES 1 through 50 (hereinafter collectively referred to as “Defendants”) for  
7 violations of the California Labor Code and violations of the California Unfair Competition Law  
8 (hereinafter “UCL”) on behalf of themselves and others aggrieved employees.

9  
10 **JURISDICTION AND VENUE**

11 2. The Court has jurisdiction over the violations of the Cal. Labor Code and Cal.  
12 Business and Professions Code § 17200, et seq., (Unfair Practices Act). This representative action  
13 is brought pursuant to the California Labor Code § 2698, et seq. The civil penalties sought by  
14 Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established  
15 according to proof at trial.

16 3. Venue is proper in the Court pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5  
17 because many of the claims made, and the labor code violations alleged against the persons  
18 identified herein, occurred in the County of Los Angeles. This Court is the proper court and this  
19 action is properly filed in the County of Los Angeles and in this judicial district because (a)  
20 Defendant Sante maintains office(s) and transacts business in Los Angeles County, (b) Defendant  
21 Llavaness resides in Los Angeles County, (c) contracts of employment between Plaintiffs and  
22 Defendant Sante were made in Los Angeles County, (d) work relevant to this action was  
23 performed in Los Angeles County, and (e) material transactions between Plaintiffs and  
24 Defendants took place within Los Angeles County.

25 4. As a direct and proximate result of the unlawful acts of Defendants, Plaintiffs have  
26 suffered and continue to suffer from loss of earnings and other damages in amounts not yet  
27 ascertained, but subject to proof at trial.

**THE PARTIES**

5. Plaintiff MARK SUMARIA is an individual residing in the State of California, County of Los Angeles.

6. Plaintiff ZAYDEE MERCADO is an individual residing in the State of California, County of Los Angeles.

7. At all times herein mentioned, Defendant SANTE HEALTH PARTNERS, LLC, was a Delaware limited liability company doing business in the County of Los Angeles, State of California, with its principal address at 23822 Valencia Blvd., Ste. 209, Valencia, CA 91355.

8. At all times herein mentioned, Defendant CATHERINE LLAVANES was and is the Chief Executive Officer and managing agent of SANTE HEALTH PARTNERS, LLC and is an individual residing in the State of California, County of Los Angeles.

9. Plaintiff MARK SUMARIA was employed by Defendants as a Director of Surgery Center Services from approximately January 3, 2022, until on or about September 28, 2022.

10. Plaintiff ZAYDEE MERCADO was employed by Defendants as Chief Nursing Officer from approximately January 3, 2022, until on or about October 7, 2022.

11. At all relevant times, Defendants were the “employer” of Plaintiffs within the meaning of all applicable state laws and statutes.

12. Defendants sued herein as DOES 1 through 50 are sued under said fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiffs are informed and believe, and thereon allege, that each defendant sued under such fictitious names is in some manner responsible for the wrongs and damages as alleged herein; and in so acting was functioning as the agent, servant, manager, supervisor, employee, subsidiary, and/or joint venturer of Defendant Sante, and in doing the actions mentioned below was acting within the course and scope of his or her authority as such agent, servant, manager, supervisor, employee, subsidiary, and/or joint venturer with the permission and consent of Defendant Sante.

13. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other

1 Defendants, and that said acts and failures to act were within the course and scope of said agency,  
2 employment and/or direction and control. Plaintiffs are informed and believe, and thereon allege,  
3 that at all times material hereto Defendants were and are the agents of each other.

4 14. As a direct and proximate result of the unlawful acts of Defendants, Plaintiffs have  
5 suffered and continue to suffer from loss of earnings, humiliation, embarrassment and emotional  
6 pain and suffering, and other damages in amounts not yet ascertained, but subject to proof at trial.

### 7 **GENERAL ALLEGATIONS**

8 15. At all relevant times set forth herein, Defendants employed Plaintiff Mercado,  
9 Plaintiff Sumaria, and other aggrieved employees who worked for Defendants in the State of  
10 California (hereinafter collectively referred to as the “other aggrieved employees”).

11 16. From January 2022 through October 2022, Plaintiff Sumaria worked for  
12 Defendants as a nurse in the position of Director of Surgery Center Services.

13 17. From January 2022 through October 2022, Plaintiff Mercado worked for  
14 Defendants as a nurse practitioner in the position of Chief Nursing Officer. Defendant classified  
15 and treated Mercado as an independent contractor throughout the entirety of her employment.

16 18. Plaintiff Mercado is informed and believes, and based thereon alleges, that  
17 Defendants willfully misclassified Plaintiff Mercado and other aggrieved employees as  
18 independent contractors. Throughout Plaintiff Mercado’s employment, Defendants had the right  
19 to control the manner and means by which Plaintiff Mercado was to carry out her role as a nurse  
20 practitioner. Other aggrieved employees were also not free from the control and direction of  
21 Defendants in connection with the performance of their work. For example, Defendants control  
22 the amount of work available to Plaintiff Mercado and other aggrieved employees. Plaintiff  
23 Mercado and other aggrieved employees perform work that is in the usual course of Defendants’  
24 business, healthcare services, and they are essential to Defendants’ day-to-day business. Plaintiff  
25 Mercado and other aggrieved employees were not customarily engaged in an independently  
26 established business of the same nature as the work performed by Defendants. Defendants  
27 suffered and permitted Plaintiff Mercado and other aggrieved employees to work under unlawful  
28 conditions.

1           19. Defendants were aware of Plaintiff Mercado's and other aggrieved employees'  
2 employee status and of the applicable laws regulating the proper classification of employees, but  
3 willfully, voluntarily, and knowingly misclassified Plaintiff Mercado and other aggrieved  
4 employees as independent contractors to avoid employee status, in violation of California Labor  
5 Code section 226.8(a)(1).

6           20. Defendants had the authority to hire and terminate Plaintiff Mercado and the other  
7 aggrieved employees; to set work rules and conditions governing Plaintiff Mercado's and the  
8 other aggrieved employees' employment; and to supervise their daily employment activities.

9           21. Defendants failed to reimburse Plaintiff Mercado and the other aggrieved  
10 employees for business-related expenses incurred by them in the scope of their employment by  
11 Defendants, including, but not limited to, expenses related to computers and cell phones.

12           22. Plaintiff Mercado is informed and believes, and based thereon alleges, that  
13 Defendants knew or should have known that Plaintiff Mercado and the other aggrieved  
14 employees were entitled to reimbursement for necessary business-related expenses and costs.

15           23. Plaintiff Mercado and Plaintiff Sumaria are informed and believe, and based  
16 thereon allege, that Defendants knew or should have known that Plaintiff Mercado, Plaintiff  
17 Sumaria, and the other aggrieved employees were entitled to receive all wages owed to them  
18 upon discharge or resignation and they did not, in fact, receive all such wages owed to them at the  
19 time of their discharge.

20           24. Plaintiff Mercado and Plaintiff Sumaria are informed and believe, and based  
21 thereon allege, that Defendants knew or should have known that Plaintiff Mercado, Plaintiff  
22 Sumaria, and the other aggrieved employees were entitled to receive all wages owed to them  
23 during their employment. Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved  
24 employees did not receive payment of all wages within any time permissible under California  
25 Labor Code section 204.

26           25. Plaintiff Mercado and Plaintiff Sumaria are informed and believe, and based  
27 thereon allege, that Defendants knew or should have known that Plaintiff Mercado, Plaintiff  
28 Sumaria, and the other aggrieved employees were entitled to receive complete and accurate wage  
statements in accordance with California law, but, in fact, they did not receive complete and

1 accurate wage statements from Defendants.

2 26. Plaintiff Mercado and Plaintiff Sumaria are informed and believe, and based  
3 thereon allege, that Defendants knew or should have known that Defendants had to keep complete  
4 and accurate payroll records for Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved  
5 employees in accordance with California law, but, in fact, did not keep complete and accurate  
6 payroll records.

7 27. Plaintiff Mercado and Plaintiff Sumaria are informed and believe, and based  
8 thereon allege, that Defendants knew or should have known that they had a duty to compensate  
9 Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved employees pursuant to California  
10 law, and that Defendants had the financial ability to pay such compensation, but willfully,  
11 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff Mercado,  
12 Plaintiff Sumaria, and the other aggrieved employees that they were properly denied wages, all in  
13 order to increase Defendants' profits.

14 28. At all materials times set forth herein, Defendants failed to pay Plaintiff Mercado,  
15 Plaintiff Sumaria, and the other aggrieved employees all wages owed to them upon discharge or  
16 resignation.

17 29. At all material times set forth herein, Defendants failed to pay Plaintiff Mercado,  
18 Plaintiff Sumaria, and the other aggrieved employees' wages within any time permissible under  
19 California law, including, *inter alia*, California Labor Code section 204.

20 30. At all material times set forth therein, Defendants failed to provide complete and  
21 accurate wage statements to Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved  
22 employees.

23 31. At all material times set forth herein, Defendants failed to keep complete and  
24 accurate payroll records for Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved  
25 employees.

26 32. At all material times set forth herein, Defendants failed to reimburse Plaintiff  
27 Mercado and the other aggrieved employees for necessary business-related expenses and costs.

28 33. At all material times set forth herein, Defendants failed to properly compensate  
Plaintiff Mercado, Plaintiff Sumaria, and the other aggrieved employees pursuant to California

1 law in order to increase Defendants' profits.

2 34. California Labor Code section 218 states that nothing in Article I of the Labor  
3 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due  
4 to him [or her] under this article."

5 35. At all times herein set forth, PAGA was applicable to Plaintiff Mercado and  
6 Plaintiff Sumaria's employment by Defendants.

7 36. At all times herein set forth, PAGA provides that any provision of law under the  
8 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA  
9 for violations of the California Labor Code may, as an alternative, be recovered through a civil  
10 action brought by an aggrieved employee on behalf of herself and other current or former  
11 employees pursuant to procedures outlined in California Labor Code section 2699.3.

12 37. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved  
13 employee," who is any person that was employed by the alleged violator and against whom one  
14 or more of the alleged violations was committed.

15 38. Plaintiff Mercado and Plaintiff Sumaria were employed by Defendants and the  
16 alleged violation was committed against them during their time of employment and they are,  
17 therefore, aggrieved employees. Plaintiff Mercado, Plaintiff Sumaria, and the other employees  
18 are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are  
19 all current or former employees of Defendants, and one or more of the alleged violations were  
20 committed against them.

21 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
22 employee, including Plaintiff Mercado and Plaintiff Sumaria, may pursue a civil action arising  
23 under PAGA after the requirements as stated in said sections have been met.

24 40. On July 26, 2023, Plaintiff Mercado and Plaintiff Sumaria provided written notice  
25 via online submission to the LWDA and by U.S. Certified Mail to Defendants of the specific  
26 provisions of the California Labor Code alleged to have been violated, including the facts and  
27 theories to support the alleged violations.

28 41. Therefore, Plaintiff Mercado and Plaintiff Sumaria have satisfied the  
administrative prerequisites under California Labor Code section 2699.3(a) to recover civil

1 penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204,  
2 226, 226.3, 226.8, 1174, and 2802.

3  
4 **FACTUAL ALLEGATIONS**

5 42. Plaintiff Mark Sumaria and Plaintiff Zaydee Mercado began working for Sante on  
6 January 3, 2022, after Sante CEO, Defendant Catherine Llavanos, recruited them to join the  
7 company in December 2021. Plaintiff Mercado is a nurse practitioner who worked for Sante full  
8 time as Chief Nursing Officer under a 1099 contract. Plaintiff Sumaria worked for Sante full time  
9 as Director of Surgery Center Services and a W-2 employee.

10 43. During Plaintiff Mercado's employment, Sante controlled the amount of work  
11 available to Plaintiff Mercado. Sante set the rates paid to Plaintiff Mercado. Plaintiff Mercado  
12 was required to conform to Sante's policies and procedures while working at Sante. Plaintiff  
13 Mercado performed work that was within the usual course of Sante's business, healthcare  
14 services, and she was essential to Sante's day-to-day business. Per her contract, Plaintiff Mercado  
15 was required not to do anything to compete with Sante's business, nor could she plan or organize  
16 any competing business activity. She was restricted by Sante from entering into any agreement  
17 which conflicts with duties or obligations to Sante.

18 44. Throughout Plaintiff Mercado's entire employment with Sante, Sante failed to  
19 furnish itemized wage statements to Plaintiff Mercado upon the payment of wages. Additionally,  
20 wage payments to Plaintiff Mercado were regularly delayed by at least a few days to more than a  
21 week. On October 7, 2022, Plaintiff Mercado resigned from her position. Sante did not pay  
22 Plaintiff Mercado all wages owed to her within 72 hours of her resignation.

23 45. For the approximately nine months of her employment, Plaintiff Mercado was not  
24 provided with a work-issued laptop computer or cell phone. Instead, Plaintiff Mercado used a  
25 personal laptop and cell phone to carry out the necessary duties of her employment, and she was  
26 not provided any reimbursement.

27 46. Throughout Plaintiff Sumaria's entire employment with Sante, Sante failed to  
28 furnish itemized wage statements to Plaintiff Sumaria upon the payment of wages. Additionally,

1 wage payments to Plaintiff Sumaria were regularly delayed by at least a few days to more than a  
2 week. On September 28, 2022, Plaintiff Sumaria was terminated. Upon his termination, Sante did  
3 not immediately pay Plaintiff Sumaria all wages owed to him. He was not paid these wages until  
4 more than a month later.

5  
6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

8 **[Cal. Lab. Code § 2802]**

9 **(Plaintiff Zaydee Mercado Against Defendants Sante, Llavanés, and Does 1-50)**

10 47. As a separate and distinct cause of action, Plaintiff Mercado complains and  
11 realleges all the allegations contained in this Complaint, and incorporates them by reference into  
12 this cause of action as though fully set forth herein, excepting those allegations which are  
13 inconsistent with this cause of action. This cause of action is brought against Defendants Sante,  
14 Llavanés, and DOES 1 through 50.

15 48. During all relevant times, Plaintiff Mercado was an employee of Defendant Sante.

16 49. Pursuant to Cal. Lab. Code § 2802, employers are required to indemnify  
17 employees, including Plaintiff Mercado, for any expenses and losses incurred in the performance  
18 of their job duties. This statute is designed to prevent employers from causing employees to incur  
19 operating expenses that should be borne by the employer. *See Gattuso v. Harte-Hankes Shoppers,*  
20 *Inc.* (2007) 42 Cal.4th 554, 562. Defendants failed to provide and maintain tools and equipment  
21 required by the employer and those that are necessary to the performance of the job.

22 50. Cal. Lab. Code § 558.1 provides for a private right of action against persons who  
23 act on behalf of an employer who violate or cause the employer to violate Cal. Lab. Code § 2802.  
24 Therefore, Defendant Llavanés is individually liable for violations of Cal. Lab. Code § 2802.

25 51. While acting on the direct instruction of Defendants and discharging her duties for  
26 Defendants, Plaintiff Mercado incurred work-related expenses. Such expenses include but are not  
27 limited to cell phone expenses and laptop computer usage, as well as substantially increased  
28 utility costs (e.g., gas, heat, electricity, internet, etc.) to the extent Plaintiff Mercado needed to

1 work off-site. Plaintiff Mercado necessarily incurred these expenses and losses as a direct result  
2 of performing her job duties for Defendants and for which Defendants failed to reimburse or  
3 indemnify Mercado.

4 52. Plaintiff Mercado seeks to recover these unreimbursed business or operating  
5 expenses. Plaintiff Mercado is entitled to reimbursement plus reasonable attorneys' fees and costs,  
6 in an amount to be proven at trial.

7 53. Plaintiff Mercado will seek civil penalties pursuant to Cal. Labor Code § 558,  
8 which allows an award against “any employer or other person acting on behalf of an employer  
9 who violates, or causes to be violated, a section of this chapter or any provision regulating hours  
10 and days of work in any order of the Industrial Welfare Commission...”

11 WHEREFORE, Plaintiff Mercado requests relief as hereafter provided.

12  
13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

15 **[Cal. Lab. Code § 226]**

16 **(All Plaintiffs Against Defendants Sante, Llavaness, and Does 1-50)**

17 54. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
18 allegations contained in this Complaint, and incorporate them by reference into this cause of  
19 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
20 cause of action. This cause of action is brought against Defendants Sante, Llavaness, and DOES 1  
21 through 50.

22 55. During all relevant times, Plaintiffs were employees of Defendant Sante.

23 56. Cal. Labor Code § 226(a) requires an employer to provide with each wage  
24 payment an itemized statement that gives specific and accurate information for each pay period.

25 57. For the entire length of both Plaintiffs’ employment with Defendants, wage  
26 statements were not provided to Plaintiffs.

27 58. Plaintiffs are therefore entitled to recover monetary damages as stated in Cal.  
28 Labor Code § 226(e) as well as injunctive relief as provided in Cal. Labor Code § 226(g).

1 Plaintiffs have incurred and continue to incur legal expenses and attorney's fees. Plaintiffs are  
2 presently unaware of the precise amount of these expenses and fees and pray for leave of court to  
3 amend this Complaint when the amounts are more fully known and to seek such legal expenses  
4 and attorney's fees from Defendants.

5 59. Cal. Lab. Code § 558.1 provides for a private right of action against persons who  
6 act on behalf of an employer who violate or cause the employer to violate Cal. Lab. Code § 226.  
7 Therefore, Defendant Llavanes is individually liable for violations of Cal. Lab. Code § 226.

8 60. Plaintiffs will seek civil penalties pursuant to Cal. Labor Code § 558, which allows  
9 an award against "any employer or other person acting on behalf of an employer who violates, or  
10 causes to be violated, a section of this chapter or any provision regulating hours and days of work  
11 in any order of the Industrial Welfare Commission..."

12 WHEREFORE, Plaintiffs request relief as hereafter provided.

13  
14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES UPON SEPARATION**

16 **[Cal. Lab. Code §§ 201 through 203]**

17 **(All Plaintiffs Against Defendants Sante, Llavanes, and Does 1-50)**

18 61. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
19 allegations contained in this Complaint, and incorporate them by reference into this cause of  
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
21 cause of action. This cause of action is brought against Defendants Sante, Llavanes, and DOES 1  
22 through 50.

23 62. During all relevant times, Plaintiffs were employees of Defendant Sante.

24 63. At all times relevant hereto, Cal. Lab. Code §§ 201-203 applied to Defendants'  
25 employment of Plaintiffs. Pursuant to, Cal. Lab. Code § 201, if an employer such as Defendants  
26 discharged an employee, such as Plaintiff Sumaria, the wages earned and unpaid at the time of  
27 discharge were due and payable immediately. Furthermore, Cal. Lab. Code § 202 provides that,  
28 if an employee, such as Plaintiff Mercado, voluntarily leaves his or her employment, the wages

1 earned and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless  
2 the employee has given seventy-two (72) hours previous notice of his or her intention to leave, in  
3 which case the employee is entitled to receive his or her wages immediately at the time of  
4 quitting.

5 64. Plaintiff Sumaria is informed and believes, and thereon alleges that Defendants  
6 willfully failed to pay him his earned and unpaid wages at the time of his discharge. Plaintiff  
7 Mercado is informed and believes, and thereon alleges that Defendants willfully failed to pay her  
8 earned and unpaid wages within seventy-two (72) hours of her resignation. Defendants therefore  
9 violated Cal. Lab. Code §§ 201 and 202. At all times relevant hereto, Cal. Labor Code § 203  
10 provided that, if an employer such as Defendants fails to pay any wages of an employee who is  
11 discharged, the wages of the employee shall continue as a penalty from the due date thereof at the  
12 same rate until paid or until an action thereof is commenced, but the wages shall not continue for  
13 more than thirty (30) days.

14 65. Defendants willfully failed and refused to pay promptly all compensation and  
15 wages owed including unpaid wages to Plaintiffs whose employments terminated as required by  
16 Cal Lab. Code §§ 201 and 202. As a result, Defendants are liable to Plaintiffs for waiting time  
17 penalties, together with interest thereon and attorneys' fees and costs, under Cal. Lab. Code §  
18 203.

19 66. Cal. Lab. Code § 558.1 provides for a private right of action against persons who  
20 act on behalf of an employer who violate or cause the employer to violate Cal. Lab. Code § 203.  
21 Therefore, Defendant Llavanes is individually liable for violations of Cal. Lab. Code § 203.

22 67. Plaintiffs will seek civil penalties pursuant to Cal. Labor Code § 558, which allows  
23 an award against "any employer or other person acting on behalf of an employer who violates, or  
24 causes to be violated, a section of this chapter or any provision regulating hours and days of work  
25 in any order of the Industrial Welfare Commission..."

26 WHEREFORE, Plaintiffs request relief as hereafter provided.

27  
28 ///

**FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS**  
**CODE §§ 17200, ET SEQ.**

**(All Plaintiffs Against Defendants Sante and Does 1-50)**

68. As a separate and distinct cause of action, Plaintiffs complain and reallege all the allegations contained in this Complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action. This cause of action is brought against Defendants Sante and DOES 1 through 50.

69. Defendants were employers of Plaintiffs.

70. Cal. Bus. & Prof. Code §§ 17200 *et seq.* defines unfair competition to include any “unfair,” “unlawful,” or “deceptive” business practice. California’s Unfair Competition Law also provides for injunctive relief and restitution for violations.

71. Defendants have committed numerous unfair, unlawful, or deceptive business practices including: (1) failing to provide Plaintiffs with an accurate itemized wage statement for each pay period as required by law, (2) failing to pay Plaintiffs all wages during employment, (3) failing to pay Plaintiff Mercado reimbursements for business expenses, and (4) failing to pay Plaintiffs wages earned immediately upon termination or within seventy-two (72) hours after resignation.

72. Moreover, Defendants’ scheme of misclassifying Plaintiff Mercado and other employees as independent contractors and its failure to pay all wages, benefits, payroll taxes and contribute toward unemployment insurance for Plaintiff Mercado and other employees violates state and federal laws.

73. The actions of Defendants in misclassifying its employees such as Plaintiff Mercado constitute unlawful, unfair, and/or fraudulent business acts or practices, within the meaning of Business and Professions Code §§ 17200, *et seq.*

74. Plaintiff Mercado has lost money and/or property as a result of Defendants’ unlawful and unfair business acts and practices and Defendant has been unjustly enriched to the

1 extent of its failure to pay earned wages, benefits, payroll taxes and other expenses owed.

2 75. The actions of Defendants detailed herein against present and former California  
3 employees constitutes unfair, unlawful, and deceptive business practices, and constitutes actions  
4 for which injunctive relief and restitution are available.

5 76. The unlawful acts and conduct alleged herein is continuing and there is no  
6 indication that Defendants will stop such activity in the future. Plaintiffs are informed and  
7 believe, and thereon allege, that Defendants continue to engage in the practices described herein  
8 and are continuing and will continue to benefit financially from these unlawful and unfair  
9 practices unless enjoined by this court from doing so.

10 77. As a direct and proximate result of the unfair business acts and practices of  
11 Defendants, Plaintiffs are entitled to equitable and injunctive relief, including full restitution,  
12 disgorgement, and/or specific performance of payment of all wages and benefits that have been  
13 unlawfully withheld, and issuance of an order pursuant to Business and Professions Code §§  
14 17200, et seq., enjoining Defendants from engaging in the unlawful acts and practices described  
15 herein. Plaintiffs are further entitled to costs and reasonable attorneys' fees pursuant to statute.

16 WHEREFORE, Plaintiffs request relief as hereafter provided.

17  
18 **FIFTH CAUSE OF ACTION**

19 **BY PLAINTIFFS MARK SUMARIA AND ZAYDEE MERCADO ON BEHALF OF**  
20 **THEMSELVES AND ALL AGGRIEVED EMPLOYEES FOR REMEDIES UNDER THE**  
21 **PRIVATE ATTORNEY GENERAL ACT**

22 **(All Plaintiffs Against Defendant Sante and Does 1-50)**

23 78. Plaintiffs re-allege and incorporate by reference each and every allegation of the  
24 preceding paragraphs as though fully set forth herein.

25 79. At all times herein mentioned, Cal. Labor Code § 2698 *et seq.*, "The Labor Code  
26 Private Attorney General Act" (hereinafter "PAGA"), was applicable to Plaintiff Sumaria's and  
27 Plaintiff Mercado's employment by Defendants and provides that for any provision of law under  
28 the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and

1 Workforce Development Agency (“LWDA”) for violation of the Labor Code, may, as an  
2 alternative, be recovered through a civil action brought by an aggrieved employee pursuant to  
3 procedures outlines in Cal. Labor Code § 2699.3.

4 80. On or about July 26, 2023, Plaintiffs provided written notice by certified mail to  
5 the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific  
6 provisions of the California Labor Code that Defendants have violated and continue to violate.

7 81. To date, Plaintiffs have not received a response from the LWDA as to whether it  
8 will investigate the charges Plaintiffs allege. Plaintiffs therefore satisfied the requirements of Cal.  
9 Labor Code § 2699.3 and may recover civil penalties, in addition to other remedies, for violations  
10 of Labor Code.

11 82. Accordingly, Plaintiffs have exhausted all administrative procedures required of  
12 them under Cal. Labor Code §§ 2698, 2699 and 2699.3, and as a result, are justified as a matter of  
13 right in bringing forward this cause of action.

14 83. As a result of the acts alleged above, Plaintiffs seek penalties under Cal. Labor  
15 Code §§ 2698 and 2699 because of Defendants’ violation of numerous provisions of the  
16 California Labor Code.

17 84. Under Cal. Labor Code § 2699, Plaintiffs and the aggrieved employees are entitled  
18 to \$100.00 for any initial violation and \$200.00 for all subsequent violations of the above-  
19 mentioned provisions of the California Labor Code.

20 85. Under Cal. Labor Code § 2699, Plaintiffs and the aggrieved employees should be  
21 awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys’  
22 fees and costs.

23 86. Plaintiffs will seek remedies against the employers and those individuals  
24 responsible for causing violations of Cal. Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.8,  
25 1174, and 2802, which are recoverable under Cal. Labor Code § 2699 et seq., on their own behalf  
26 and on behalf of all aggrieved employees.

27 87. Plaintiffs and the other misclassified employees are “aggrieved employees” as  
28 defined by Cal. Labor Code § 2699(c) in that they are all current or former employees of

Defendants, and one or more of the alleged violations was committed against them.

### **Misclassification of Employees**

88. Defendants' scheme of misclassifying Plaintiff Mercado and other employees as independent contractors and its failure to pay all wages, benefits, payroll taxes and contribute toward unemployment insurance for Plaintiff Mercado and other employees violates Labor Code §226.8.

89. Plaintiff Mercado further alleges that Defendants are engaged in a pattern or practice of violating Cal. Labor Code § 226.8(a)(1), which has damaged Plaintiff Mercado. Therefore, pursuant to Cal. Labor Code § 226.8(c), Defendants are liable to Plaintiff Mercado for civil penalties of \$ 25,000 for each violation, or not less than \$ 10,000 for each violation, in addition to any other penalties or fines permitted by law.

90. Cal. Labor Code § 226.8 provides that the aforementioned penalties are in addition to any other penalty permitted by law.

### **Failure to Timely Pay Wages During Employment**

91. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved employees during employment in accordance with Cal. Labor Code § 204 constitutes unlawful and/or unfair activity prohibited by Cal. Labor Code § 204.

### **Failure to Provide Complete and Accurate Wage Statements**

92. Defendants' failure to provide complete and accurate wage statements to Plaintiffs and the other aggrieved employees in accordance with Cal. Labor Code § 226(a) constitutes unlawful and/or unfair activity prohibited by Cal. Labor Code § 226(a).

### **Failure to Keep Complete and Accurate Payroll Records**

93. Defendants' failure to keep complete and accurate payroll records relating to Plaintiffs and the other aggrieved employees in accordance with Cal. Labor Code § 1174(d) constitutes unlawful and/or unfair activity prohibited by Cal. Labor Code § 1174(d).

### **Failure to Reimburse Necessary Business-Related Expenses and Costs**

94. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for necessary business-related expenses and costs in accordance with Cal. Labor Code §§ 2800 and

2802 constitutes unlawful and/or unfair activity prohibited by Cal. Labor Code §§ 2800 and 2802.

95. Pursuant to Cal. Labor Code §§ 210, 218.5, 2699(f) and (g), Cal. Code of Civil Procedure § 1021.5, and any other applicable statute, Plaintiffs are entitled to recover civil penalties, plus costs and attorney's fees, for violations of the Cal. Labor Code.

WHEREFORE, Plaintiffs request relief as hereafter provided.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves individually and all similarly aggrieved employees, pray for relief and judgment against Defendants as follows:

#### **As to the First Cause of Action:**

- a. For all applicable damages, civil penalties, and restitution available to Plaintiffs and pursuant to Cal. Labor Code § 2802 and all other Labor Code provisions;
- b. For an award including interest including prejudgment interest, costs and reasonable attorney fees; and
- c. That the Court award such other and further relief as this Court may deem appropriate.

#### **As to the Second Cause of Action:**

- a. For all applicable damages, civil penalties, and restitution available to Plaintiffs and pursuant to Cal. Labor Code § 226 and all other Labor Code provisions;
- b. For injunctive relief as specified in Cal. Labor Code § 226(h).
- c. For an award including interest including prejudgment interest, costs and reasonable attorney fees; and
- d. That the Court award such other and further relief as this Court may deem appropriate.

#### **As to the Third Cause of Action:**

- a. For all applicable damages, civil penalties, and restitution available to Plaintiffs and pursuant to Cal. Labor Code § 203 and all other Labor Code provisions;
- b. For an award including interest including prejudgment interest, costs and reasonable attorney fees; and
- c. That the Court award such other and further relief as this Court may deem appropriate.

1 **As to the Fourth Cause of Action:**

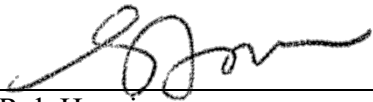
- 2 a. Equitable relief in the form of restitution and/or disgorgement of Defendants' ill-gotten  
3 profits;  
4 b. Injunctive relief enjoining Defendants from continuing the unlawful business acts and  
5 practices and false and misleading advertising as set forth herein;  
6 c. All other relief to which Plaintiffs may be entitled at law or equity;  
7 d. For such other and further relief as this Court deems appropriate.

8 **As to the Fifth Cause of Action:**

- 9 a. For statutory liquidated damages and/or penalties on behalf of Plaintiffs and all other  
10 current and former employees of Defendants, including but not limited to those available  
11 pursuant to Cal. Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.8, 1174, 2802, and  
12 2699(f), and other applicable statutes, to be distributed as required under California law  
13 between aggrieved employees and the Labor and Workforce Development Agency;  
14 b. For other penalties as may be allowed by law according to proof at trial;  
15 c. For costs and reasonable attorney fees pursuant to Cal. Labor Code § 2699(g)(1); and  
16 d. For any and all other relief, including equitable relief, as the Court may deem just and  
17 proper.

18  
19 Dated: October 27, 2023

HENNIG KRAMER RUIZ & SINGH, LLP  
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