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9 MARIANA RUELAS, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO-CENTRAL DIVISION**
12 **(UNLIMITED JURISDICTION)**

13 MARIANA RUELAS, as an “aggrieved
14 employee” on behalf of herself and other
15 similarly situated “aggrieved employees”
16 under the Labor Code Private Attorneys
17 General Act of 2004,

18 *Plaintiff,*

19 vs.

20 VISTA LA MESA SENIOR LIVING, INC.
21 dba GROSSMONT GARDENS SENIOR
22 LIVING; VISTA LA MESA SENIOR
23 LIVING, LLC; and DOES 1 to 25, inclusive,

24 *Defendants.*

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

11/21/2023 at 04:05:27 PM

Clerk of the Superior Court
By Isaiah Irizarry, Deputy Clerk

Case No. 37-2023-00050755-CU-OE-CTL

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Mariana Ruelas (hereafter “Plaintiff” or “Ruelas”), on behalf of herself, the State
2 of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),
7 against Defendants VISTA LA MESA SENIOR LIVING, INC. dba GROSSMONT GARDENS
8 SENIOR LIVING, a California corporation; VISTA LA MESA SENIOR LIVING, LLC, a
9 California limited liability company; and DOES 1 to 25, inclusive (collectively “VISTA LA
10 MESA” or “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and
13 other related relief. These claims are based on Defendants’ failures to: 1) pay all wages, including
14 minimum, regular, overtime, and doubletime wages earned for all hours worked at the correct
15 rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu thereof;
16 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof;
17 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
18 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
19 employment; 8) provide sick leave/statements of sick leave available and 9) maintain accurate
20 employment records. Accordingly, Plaintiff now seeks to recover civil penalties and related relief
21 through this representative action.

22 **JURISDICTION AND VENUE**

23 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
24 the County of San Diego in this judicial district because Defendants VISTA LA MESA SENIOR
25 LIVING, INC. dba GROSSMONT GARDENS SENIOR LIVING, VISTA LA MESA SENIOR
26 LIVING, LLC, and DOES 1 to 25, inclusive do business in the County of San Diego and because
27 Defendants’ obligations and liabilities arise therein, and because the work that was performed by
28 Plaintiff and the Aggrieved Employees in the County of San Diego is the subject of this action.

Moreover, the aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

THE PARTIES

4. Plaintiff Mariana Ruelas is resident of California.

5. Defendant VISTA LA MESA SENIOR LIVING, INC. dba GROSSMONT GARDENS SENIOR LIVING is a corporation organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

6. Defendant VISTA LA MESA SENIOR LIVING, LLC is a limited liability company organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

8. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as hourly, nonexempt employees, during the period beginning one year before the Plaintiff's notice of July 19, 2023 to the California Labor and Workforce Development Agency("LWDA") and ending on the date judgment is entered.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved

1 Employees in accordance with applicable California labor laws as alleged herein.

2 11. Plaintiff is informed and believes and thereon alleges that each and every one of
3 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
4 each acting as agents and/or employees, and/or under the direction and control of each of the other
5 defendants, and that said acts and failures to act were within the course and scope of said agency,
6 employment, and/or direction and control.

7 **FACTUAL ALLEGATIONS**

8 12. IWC Wage Order 5-2001 (“the Wage Order”) applies to “all persons employed in
9 the public housekeeping industry,” where “Public Housekeeping Industry” includes “...homes
10 for the aged, and similar establishments offering board or lodging in addition to medical, surgical,
11 nursing, convalescent, aged, or child care...” (*Id.*, §§ 1 & 2(P)(4).) At all relevant times during
12 the applicable limitations period, VISTA LA MESA operated a residential care facility for the
13 elderly. Accordingly, Plaintiff and the Aggrieved Employees are entitled to the protections
14 provided under the Wage Order.

15 13. VISTA LA MESA first employed Plaintiff as a Server/Dietary Aide in or around
16 early June 2023 to work at its Grossmont Gardens Senior Living residential care facility located
17 at 5480 Marengo Ave, in La Mesa, California. Plaintiff generally worked from 6:00 a.m. to 2:00
18 p.m. Plaintiff’s employment ended on or around June 16, 2023.

19 14. At all relevant times, VISTA LA MESA issued wages to Plaintiff and all of the
20 other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times,
21 VISTA LA MESA classified Plaintiff and all of the other Aggrieved Employees as non-exempt
22 employees entitled to the protections of the Labor Code and the Wage Order. Plaintiff’s latest rate
23 of pay was approximately \$16.00 per hour.

24 15. VISTA LA MESA failed to pay Plaintiff and the other Aggrieved Employees for
25 all time worked or subject to its control. Plaintiff and the other Aggrieved Employees consistently
26 worked “off the clock” in that the company had a policy and practice of rounding down work
27 hours and “time shaving” which led to Plaintiff and others not being paid for all hours worked,
28 which would include the minimum wage. Moreover, to the extent employees such as Plaintiff and

1 others worked through their meal periods and those meal periods were interrupted, they were not
2 compensated for that time, which would be akin to a minimum wage violation.

3 16. Due to the above “off the clock” violations, VISTA LA MESA failed to pay
4 Plaintiff and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
5 Employees’ actual work hours, which included the “off the clock” work as described above,
6 entitled them to overtime, however, it was not company policy to keep accurate track of all hours
7 worked and to pay employees the accurate amount of overtime, especially since the “off the
8 clock” work was not factored into the equation. Furthermore, any incentive payments and/or
9 bonus payments were not factored into employees’ regular rate of pay for purposes of deciphering
10 the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not
11 factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel*,
12 LLC (2021) 11 Cal. 5th 858, 863.

13 17. VISTA LA MESA failed to provide all compliant meal periods and authorize and
14 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
15 entitled. Plaintiff and the other Aggrieved Employees were entitled to take off-duty, uninterrupted
16 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
17 minute rest periods for every four hours or major fraction thereof worked. Plaintiff and the
18 Aggrieved Employees would not be able to take timely, uninterrupted meal periods before the 5th
19 or 10th hour worked. Similarly, Plaintiff and the other Aggrieved Employees were not able to
20 take timely and uninterrupted 10-minute rest breaks. During her employment, Plaintiff never took
21 a ten-minute rest break. Moreover, when the Aggrieved Employees were clocked out for a meal
22 period or taking their rest breaks, VISTA LA MESA management/staff would interrupt them with
23 questions about work related matters or requests for assistance. On information and belief, VISTA
24 LA MESA did not provide premium wages for these meal and rest break violations; if VISTA
25 LA MESA did provide premium wages, they were not paid at the correct rate, as explained above.

26 18. VISTA LA MESA failed to reimburse Plaintiff and the other Aggrieved
27 Employees for business expenses they incurred in direct consequence of the discharge of their
28 duties. VISTA LA MESA required Plaintiff and the Aggrieved Employees to use their own

1 personal cell phones to communicate with management concerning work matters. Plaintiff also
2 bought an apron for work as VISTA LA MESA did not provide her with one. VISTA LA MESA
3 did not provide Plaintiff and the others with mobile phones and did not reimburse Plaintiff and
4 the other Aggrieved Employees for these mobile phone expenses and kitchen supplies.
5 Accordingly, VISTA LA MESA was in violation of California Labor Code sections 2800 and
6 2802.

7 19. VISTA LA MESA failed to pay its employees all wages due to them within any
8 time period specified by California Labor Code section 204, including the minimum wages and
9 overtime as described above as well as meal/rest break premiums.

10 20. VISTA LA MESA did not provide Plaintiff and the other Aggrieved Employees
11 accurate, itemized wage statements. Wage statements must include, among other things, total
12 hours worked by the employee. Labor Code § 226(a)(2). VISTA LA MESA issued wage
13 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
14 number of hours worked at each hourly rate because of VISTA LA MESA's failure to properly
15 pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). VISTA LA MESA's failure
16 to maintain accurate records as to the hours worked daily by employees also constitutes a violation
17 of Labor Code section 1174(d).

18 21. Finally, because VISTA LA MESA did not properly pay all wages earned as
19 explained herein, VISTA LA MESA also failed to pay final wages owed to Plaintiff and the other
20 Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages
21 include minimum wages and compensation for all hours worked, overtime compensation,
22 premium pay for missed meal and rest breaks, and business expense reimbursement, among
23 others.

24 22. VISTA LA MESA failed to provide paid sick leave to Plaintiff and all of the other
25 Aggrieved Employees. VISTA LA MESA failed to provide Plaintiff and all of the other
26 Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick
27 leave.

28 23. VISTA LA MESA has also violated Labor Code section 558 and engaged in

1 business practices which violate Business and Professions Code Section 17200.

2 24. Accordingly, Plaintiff now seeks civil penalties on behalf of herself and the
3 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
4 the Wage Order.

5 **FIRST (AND ONLY) CAUSE OF ACTION**

6 **CIVIL PENALTIES**

7 **(Lab. Code §§ 2698, *et seq.*)**

8 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
9 **Defendants)**

10 25. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 26. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
12 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

13 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
14 **THE CORRECT RATES OF PAY**

15 27. Section 2 of the Wage Order defines "hours worked" as "the time during which an
16 employee is subject to the control of an employer, and includes all the time the employee is
17 suffered or permitted to work, whether or not required to do so."

18 28. Section 3 of the Wage Order states:

19 The following overtime provisions are applicable to employees 18 years of age or
20 over and to employees 16 or 17 years of age who are not required by law to attend
21 school and are not otherwise prohibited by law from engaging in the subject work.
22 Such employees shall not be employed more than eight (8) hours in any workday
23 or more than 40 in a workweek unless the employee receives one and one half
(1½) times such employee's regular rate of pay for all hours worked over 40 hours
24 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
25 beyond eight (8) hours in any workday or more than six (6) days in any workweek
26 is permissible provided the employee is compensated for such overtime at not less
27 than:

28 (a) One and one-half (1½) times the employee's regular rate of pay for all
hours worked in excess of eight (8) hours up to and including twelve (12)
hours in any workday, and for the first eight (8) hours worked on the
seventh (7th) consecutive day of work in a workweek;

(b) Double the employee's regular rate of pay for all hours worked in excess
of 12 hours in any workday and for all hours worked in excess of eight (8)
hours on the seventh (7th) consecutive day of work in a workweek.

1 (c) The overtime rate of compensation required to be paid to a nonexempt
2 full-time salaried employee shall be computed by using the employee's
3 regular hourly salary as one fortieth (1/40) of the employee's weekly
4 salary.

5 29. Section 4 of the Wage Order requires an employer to pay non-exempt employees
6 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
7 an employer has actual or constructive knowledge that employees are working.

8 30. Labor Code section 510 states:

9 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
10 in one workday and any work in excess of 40 hours in any one workweek and the
11 first eight hours worked on the seventh day of work in any one workweek shall be
12 compensated at the rate of no less than one and one-half times the regular rate of
13 pay for an employee. Any work in excess of 12 hours in one day shall be
14 compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the regular rate of
17 pay of an employee. Nothing in this section requires an employer to combine more
18 than one rate of overtime compensation in order to calculate the amount to be paid
19 to an employee for any hour of overtime work.

20 31. Labor Code section 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum wage required under the applicable Wage Order.

22 32. Labor Code section 1197 makes it unlawful for an employer to pay an employee
23 less than the minimum wage required under the applicable Wage Order for all hours worked
24 during a payroll period.

25 33. Labor Code section 1198 makes it unlawful for an employer to employ an
26 employee under conditions that violate the Wage Order.

27 34. In conjunction, these provisions of the Labor Code require employers to pay non-
28 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

35. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
limited to overtime wages for all overtime hours they worked at the correct rates of pay.

36. Plaintiff is informed and believes and thereon alleges that, at all relevant times,

Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as required by California law.

B. FAILURE TO PROVIDE MEAL PERIODS

37. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

38. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

39. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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1 (B) If an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of this Order, the
3 employer shall pay the employee one (1) hour of pay at the
4 employee's regular rate of compensation for each work day that
5 the meal period is not provided.

6 40. In relevant part, California Labor Code § 226.7 states:

7 (b) An employer shall not require an employee to work during
8 a meal or rest period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the
10 Industrial Welfare Commission, the Occupational Safety
11 and Health Standards Board, or the Division of
12 Occupational Safety and Health.

13 (c) If an employer fails to provide an employee a meal period
14 or rest period in accordance with a state law, including, but
15 not limited to, an applicable statute or applicable
16 regulation, standard, or order of the Industrial Welfare
17 Commission, the Occupational Safety and Health
18 Standards Board, or the Division of Occupational Safety
19 and Health, the employer shall pay the employee one
20 additional hour of pay at the employee's regular rate of
21 compensation for each work day that the meal or rest
22 period is not provided.

23 41. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
24 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
25 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
26 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

27 42. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
28 with all required timely 30-minute meal periods free from any work duties in accordance with the
Wage Order.

43. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
Employees with timely meal periods.

44. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty

meal periods required by California law.

C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

45. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

46. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

47. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of

1 compensation for each work day that the meal or rest
2 period is not provided.

3 48. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
4 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
5 period of work, or major fraction thereof.

6 49. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
7 Employees to take all 10-minute rest periods free from any work duties in accordance with the
8 Wage Order.

9 50. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
11 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
12 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

13 51. At all relevant times, due to high workload, Defendants failed to authorize and
14 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every
15 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
16 period protections of the Wage Order from the California Division of Labor Standards
17 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
18 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
19 periods every four hours worked or major fraction thereof.

20 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times
21 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
22 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
23 Employees to take all rest breaks required by California law.

24 **D. FAILURE TO INDEMNIFY**

25 53. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
26 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her duties.”

28 54. Labor Code section 1198 prohibits employers from employing their employees
under conditions prohibited by the Wage Order.

55. At all relevant times during the applicable limitations period, as a condition for
employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain

1 business expenses. These costs include, but are not limited to, use of personal cell phones to
2 communicate with office staff concerning work matters and kitchen supplies, including aprons.
3 However, VISTA LA MESA did not reimburse Plaintiff and the others for these business
4 expenses.

5 56. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
6 for expenditures incurred as a direct consequence of discharging their duties in violation of
7 California Labor Code sections 2800 and 2802.

8 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
10 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
11 incurred during the course of performing their duties.

12 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
13 **STATEMENTS**

14 58. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
15 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
16 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
18 each hourly rate by the employee.

19 59. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
20 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
21 the employer fails to provide accurate and complete information as required by California Labor
22 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
23 alone one or more of the following:

24 A. The amount of the gross wages or net wages paid to the employee during
25 the pay period or any of the other information required to be provided on the itemized wage
26 statement pursuant to California Labor Code § 226(a);

27 B. Which deductions the employer made from gross wages to determine the
28 net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

1 D. The name of the employee and only the last four digits of his or his social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

4 60. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 61. As alleged herein, at all relevant times during the applicable limitations period,
8 Defendants violated California Labor Code section 226 because they did not properly and
9 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
10 the corresponding number of hours worked at each rate by the employee and other requirements
11 of California Labor Code section 226. Defendants failed to state in the wage statements they
12 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
13 including, but not limited to, regular and overtime wages for work they performed off-the-clock
14 (as described above).

15 62. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
16 accurate wage statements was knowing and intentional. Defendants had the ability to provide
17 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
18 provided wage statements that Defendants knew were not accurate.

19 63. As a result of being provided with inaccurate wage statements by Defendants,
20 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
21 accurate wage statements were violated and they were misled about the amount of wages they
22 had actually earned and were owed. In addition, the absence of accurate information on their wage
23 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
24 discovery and mathematical computations to determine the amounts of wages owed, has caused
25 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
26 submission of inaccurate information about wages to state and federal government agencies.
27 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
28 statements whether Defendants complied with their obligations under California Labor Code
section 226(a).

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1 **F. UNTIMELY WAGES DURING EMPLOYMENT**

2 64. Labor Code § 204 states:

3 (a) All wages, other than those mentioned in Section 201,
4 201.3, 202, 204.1, or 204.2, earned by any person in any
5 employment are due and payable twice during each
6 calendar month, on days designated in advance by the
7 employer as the regular paydays. Labor performed
8 between the 1st and 15th days, inclusive, of any calendar
9 month shall be paid for between the 16th and the 26th day
of the month during which the labor was performed, and
labor performed between the 16th and the last day,
inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

10 (b) (1) Notwithstanding any other provision of this
11 section, all wages earned for labor in excess of the normal
12 work period shall be paid no later than the payday for the
next regular payroll period.

13 (2) An employer is in compliance with the
14 requirements of subdivision (a) of Section 226
15 relating to total hours worked by the employee, if
16 hours worked in excess of the normal work period
17 during the current pay period are itemized as
18 corrections on the paystub for the next regular pay
period. Any corrections set out in a subsequently
issued paystub shall state the inclusive dates of
the pay period for which the employer is
correcting its initial report of hours worked.

19 (c) However, when employees are covered by a collective
20 bargaining agreement that provides different pay
21 arrangements, those arrangements shall apply to the
covered employees.

22 (d) The requirements of this section shall be deemed satisfied
23 by the payment of wages for weekly, biweekly, or
24 semimonthly payroll if the wages are paid not more than
25 seven calendar days following the close of the payroll
period.

26 65. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
27 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
28 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.

Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

G. UNTIMELY FINAL WAGES

66. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

67. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

68. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

69. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

70. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three

1 years. An employer shall not prohibit an employee from maintaining a
2 personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

3 71. Labor Code § 1174.5 states:

4 Any person employing labor who willfully fails to maintain the records required
5 by subdivision (c) of Section 1174, or to allow any member of the commission
6 or employees of the division to inspect records pursuant to subdivision (b) of
Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

7 72. Section 7 of the Wage Order states:

8 (A) Every employer shall keep accurate information with respect to
9 each employee including the following:

10 (1) Full name, home address, occupation and social security
number.

11 (2) Birth date, if under 18 years, and designation as a minor.

12 (3) Time records showing when the employee begins and ends
13 each work period. Meal periods, split shift intervals and
14 total daily hours worked shall also be recorded. Meal
15 periods during which operations cease and authorized rest
periods need not be recorded.

16 (4) Total wages paid each payroll period, including value of
17 board, lodging, or other compensation actually furnished to
18 the Employee.

19 (5) Total hours worked in the payroll period and applicable
20 rates of pay. This information shall be made readily
available to the employee upon reasonable request.

21 (6) When a piece rate or incentive plan is in operation, piece
22 rates or an explanation of the incentive plan formula shall
23 be provided to employees. An accurate production record
shall be maintained by the employer.

24 73. Labor Code § 1198 prohibits employers from employing their employees under
25 conditions prohibited by the Wage Order.

26 74. On information and belief, Defendants have willfully failed to maintain the records
27 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
28 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff

1 and the Aggrieved Employees.

2 75. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on
3 behalf of herself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved
4 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
5 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
6 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
pay period (penalties set by Labor Code section 2699(f)(2)).

7 **I. CIVIL PENALTIES SOUGHT**

8 76. During the applicable time period, Defendants violated California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174, 1194, 1197, 1198, 2802,
10 and related Labor Code statutes.

11 77. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
12 behalf of themselves and other current or former employees, to bring a civil action to recover civil
13 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

14 78. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
15 Employees are entitled to recover civil penalties for each of the Defendants' violations of
16 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174,
1194, 1197, 1198 and 2802 during the applicable limitations period in the following amounts:

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
19 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
20 (penalty amounts established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226, two hundred fifty dollars
22 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
23 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

24 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
25 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
26 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
27 each pay period for which the employee was underpaid (penalty amounts established by
California Labor Code § 558).

28 D. For violations of California Labor Code § 1174, five hundred dollars

1 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
2 by Labor Code § 1174.5).

3 E. For violations of California Labor Code § 1197, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
5 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
6 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

7 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,
8 246.5, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
9 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
10 per pay period for each subsequent violation (penalty amounts established by California Labor
11 Code § 2699(f)(2)).

12 **J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

13 79. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated July 19, 2023, Plaintiff gave written notice by certified mail
15 to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
16 provisions of the California Labor Code alleged to have been violated, including the facts and
17 theories to support the alleged violations. The LWDA has failed to take action in response within
65 days of Plaintiff’s notice.

18 80. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
19 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
20 connection with their claims for civil penalties.

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- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

MM LAW, APC

By: Maralle Messrelia
Maralle Messrelia, Esq.
Attorney for Plaintiff,
MARIANA RUELAS, and all others
similarly situated