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 and the aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

MARIA DEL CARMEN CRUSES ARENAS,
 an individual, on behalf of herself, others
 similarly situated,

PLAINTIFF,

v.

THE BERKELEY GROUP LLC, a California
 Limited Liability Company, VALIANCE
 CAPITAL LLC, a California Limited
 Liability Company, and DOES 1 thru 50,
 inclusive,

DEFENDANTS.

CASE NO.: 23CV047470

**FIRST AMENDED CLASS ACTION AND
 REPRESENTATIVE ACTION
 COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Penalties Pursuant to Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2698, et seq. ("PAGA") for Violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2776-2787, 2802, 2810.5, 3700, and 3700.5, and IWC Wage Order No. 4-2001

1 Plaintiff MARIA DEL CARMEN CRUSES ARENAS, an individual, on behalf of herself
2 and others similarly situated complains of Defendants THE BERKELEY GROUP LLC and
3 VALIANCE CAPITAL LLC (collectively “Berkeley”) and the Doe Defendants (“Defendants”)
4 and each of them, as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
8 Plaintiff and the following classes and subclasses:

- 9
- 10 (1) all individuals, including but not limited to housekeepers and janitorial
11 employees, who were employed by The Berkeley Group LLC or its predecessor,
12 merged or related entities in California at any point from April 17, 2019 and
continuing into the present; (the “Berkely Group Class”)
- 13 (2) all individuals, including but not limited to housekeepers and janitorial employees,
14 who were employed by Valiance Capital LLC or its predecessor, merged or related
15 entities in California at any point from April 17, 2019 and continuing into the present.
(the “Valiance Capital Class”);
- 16 (3) all non-exempt, hourly employees who were employed by The Berkeley Group LLC
17 or its predecessor, merged or related entities in California at any point from April 17,
18 2019 and continuing into the present. (“The Berkeley Group Non-Exempt Class”);
- 19 (4) all non-exempt, hourly employees who were employed by Valiance Capital LLC or
20 its predecessor, merged or related entities in California at any point from April 17,
21 2019 and continuing into the present. (“Valiance Capital Non-Exempt Class”);
- 22 (5) all individuals who were employed by The Berkeley Group LLC or its predecessor,
23 merged or related entities in California as a non-exempt, hourly employee,
24 housekeeper, janitor, or other similar position and who worked a shift of more than
25 eight (8) hours in a day and/or forty (40) hours in a week during a pay period from
April 17, 2019 and continuing into the present. (“Berkeley Group General Overtime
Subclass”);
- 26 (6) all individuals who were employed by Valiance Capital LLC or its predecessor,
27 merged or related entities in California as a non-exempt, hourly employee,
28 housekeeper, janitor, or other similar position and who worked a shift of more than
eight (8) hours in a day and/or forty (40) hours in a week during a pay period from

1 April 17, 2019 and continuing into the present. (“Valiance General Overtime
2 Subclass”);

3 (7) all individuals who were employed by The Berkeley Group LLC or its predecessor,
4 merged or related entities in California as a non-exempt, hourly employee,
5 housekeeper, janitor, or other similar position and who worked a shift of more than
6 twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from
7 April 17, 2019 and continuing into the present. (“Berkeley Group Doubletime
8 Overtime Subclass”);

9 (8) all individuals who were employed by Valiance Capital LLC or its predecessor,
10 merged or related entities in California as a non-exempt, hourly employee,
11 housekeeper, janitor, or other similar position and who worked a shift of more than
12 twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from
13 April 17, 2019 and continuing into the present. (“Valiance Doubletime Overtime
14 Subclass”);

15 Collectively, groups 5-8 may be referred to as the “Overtime Subclass.”

16 (9) all individuals who were employed by The Berkeley Group LLC or its predecessor,
17 merged or related entities in California who worked one or more shifts of more than
18 six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
19 position from April 17, 2019 and continuing into the present. (“Berkeley Group
20 General Meal Period Subclass”);

21 (10) all individuals who were employed by Valiance Capital LLC or its predecessor,
22 merged or related entities in California who worked one or more shifts of more than
23 six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
24 position from April 17, 2019 and continuing into the present. (“Valiance Capital
25 General Meal Period Subclass”);

26 (11) all individuals who were employed by The Berkeley Group LLC or its predecessor,
27 merged or related entities in California who worked one or more shifts of more than
28 ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other
similar position from April 17, 2019 and continuing into the present. (“Berkeley
Group Second Meal Period Subclass”);

(12) all individuals who were employed by Valiance Capital LLC or its predecessor,
merged or related entities in California who worked one or more shifts of more than
six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
position from April 17, 2019 and continuing into the present. (“Valiance Capital
Second Meal Period Subclass”);

Collectively, groups 9-12 may be referred to as the “Meal Period Subclass.”

(13) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from April 17, 2019 and continuing into the present. (“Berkeley Group General Rest Period Subclass”);

(14) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from April 17, 2019 and continuing into the present. (“Valiance Capital Rest Period Subclass”);

(15) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than six (6) hours, but less than eight (8) hours in length from April 17, 2019 and continuing into the present. (“Berkeley Group General Fractional Rest Period Subclass”);

(16) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than six (6) hours, but less than eight (8) hours in length from April 17, 2019 and continuing into the present. (“Valiance Capital Fractional Rest Period Subclass”);

(17) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar position from April 17, 2019 and continuing into the present. (“Berkeley Group Third Rest Period Subclass”);

(18) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar position from April 17, 2019 and continuing into the present. (“Valiance Capital Third Rest Period Subclass”);

Collectively, groups 13-18 may be referred to as the “Rest Period Subclass.”

1
2 (19) all individuals who were employed by The Berkeley Group LLC or its predecessor,
3 merged or related entities in California as a non-exempt, hourly employee,
4 housekeeper, janitor, or other similar position from October 12, 2022 and continuing
into the present. ("Berkeley Group Wage Statement Subclass");

5 (20) all individuals who were employed by Valiance Capital LLC or its predecessor,
6 merged or related entities in California as a non-exempt, hourly employee,
7 housekeeper, janitor, or other similar position from October 12, 2022 and continuing
into the present. ("Valiance Capital Wage Statement Subclass");

8 Collectively, groups 19-20 may be referred to as the "Wage Statement Subclass."

9
10 (21) all individuals who were employed by The Berkeley Group LLC or its predecessor,
11 merged or related entities for one or more pay periods in California as a non-exempt,
12 hourly employee, housekeeper, janitor, or other similar position and whose
employment concluded at any time between April 28, 2020 and continuing into the
present. ("Berkeley Group General Late Payment Subclass");

13 (22) all individuals who were employed by Valiance Capital LLC or its predecessor,
14 merged or related entities for one or more pay periods in California as a non-exempt,
15 hourly employee, housekeeper, janitor, or other similar position and whose
16 employment concluded at any time between April 28, 2020 and continuing into the
present. ("Valiance Capital General Late Payment Subclass");

17 Collectively, groups 21-22 may be referred to as the "Late Payment Subclass."

18 These Classes and Subclasses may all collectively be referred to herein as the "Class"
19 where appropriate and for ease of reference.

20 2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
21 on behalf of the State of California and several groups of aggrieved employees defined as
22 follows:

23 (1) all individuals, including but not limited to housekeepers and janitorial
24 employees, who were employed by The Berkeley Group LLC or its
25 predecessor, merged or related entities in California at any point from
26 September 29, 2022 and continuing into the present. ("The Berkeley Group
Aggrieved Employees");

27 (2) all individuals, including but not limited to housekeepers and janitorial
28 employees, who were employed by Valiance Capital LLC or its predecessor,

merged or related entities in California at any point from September 29, 2022 and continuing into the present. (“Valiance Capital Aggrieved Employees”);

(3) all non-exempt employees who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California at any point from September 29, 2022 and continuing into the present. (“The Berkeley Group Non-Exempt Aggrieved Employees”);

(4) all non-exempt employees who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California at any point from September 29, 2022 and continuing into the present. (“Valiance Capital Non-Exempt Aggrieved Employees”);

(5) all non-exempt, hourly employees who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California at any point from September 29, 2022 and continuing into the present. (“Berkeley Group Hourly Non-Exempt Aggrieved Employees”);

(6) all non-exempt, hourly employees who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California at any point from September 29, 2022 and continuing into the present. (“Valiance Capital Hourly Non-Exempt Aggrieved Employees”);

(7) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 29, 2022 and continuing into the present. (“Berkeley Group General Overtime Aggrieved Employees”);

(8) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 29, 2022 and continuing into the present. (“Valiance General Overtime Aggrieved Employees”);

(9) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from

September 29, 2022 and continuing into the present. (“Berkeley Group Doubletime Overtime Aggrieved Employees”);

(10) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from September 29, 2022 and continuing into the present. (“Valiance Doubletime Overtime Aggrieved Employees”);

(11) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment from September 29, 2022 and continuing into the present; (“Berkeley Group Regular Rate Overtime Aggrieved Employees”);

(12) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment from September 29, 2022 and continuing into the present; (“Valiance Regular Rate Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups 7-12 may be referred to as the “Overtime Aggrieved Employees.”

(13) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from September 29, 2022 and continuing into the present. (“Berkeley Group General Meal Period Aggrieved Employees”);

(14) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California who worked one or more shifts of more

1 than six (6) hours as a non-exempt, hourly employee or other similar position
2 from September 29, 2022 and continuing into the present. (“Valiance Capital
3 General Meal Period Aggrieved Employees”);

4 (15) All individuals who were employed by The Berkeley Group LLC or its
5 predecessor, merged or related entities in California who were paid a meal
6 and/or rest period premium within the same week that they also received a non-
7 discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece
8 rate compensation, flat sum production bonus, non-discretionary production
9 bonus, attendance bonus, any other form of non-discretionary bonus and/or
10 incentive payment from September 29, 2022 and continuing into the present.
11 (“Berkeley Group Meal/Rest Period Premium Aggrieved Employees”);

12 (16) All individuals who were employed by Valiance Capital LLC or its
13 predecessor, merged or related entities in California who were paid a meal
14 and/or rest period premium within the same week that they also received a non-
15 discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece
16 rate compensation, flat sum production bonus, non-discretionary production
17 bonus, attendance bonus, any other form of non-discretionary bonus and/or
18 incentive payment from September 29, 2022 and continuing into the present.
19 (“Valiance Capital Meal/Rest Period Premium Aggrieved Employees”);

20 Collectively, aggrieved employee groups 13-16 may be referred to as the “Meal
21 Period Aggrieved Employees.”

22 (17) all individuals who were employed by The Berkeley Group LLC or its
23 predecessor, merged or related entities in California as a non-exempt hourly
24 employee, or other similar position, who worked one or more shifts of more
25 than four (4) hours in length or major fraction thereof from September 29, 2022
26 and continuing into the present. (“Berkeley Group General Rest Period
27 Aggrieved Employee”);

28 (18) all individuals who were employed by Valiance Capital LLC or its predecessor,
merged or related entities in California as a non-exempt hourly employee, or
other similar position, who worked one or more shifts of more than four (4)
hours in length or major fraction thereof from September 29, 2022 and
continuing into the present. (“Valiance Capital Rest Period Aggrieved
Employee”);

Collectively, aggrieved employee groups 16-18 may be referred to as the “Rest
Period Aggrieved Employees.”

1 (19) all individuals who were employed by The Berkeley Group LLC or its
2 predecessor, merged or related entities for one or more pay periods in
3 California as a non-exempt, hourly employee and whose employment
4 concluded at any time between September 29, 2022 and continuing into the
present. (“Berkeley Group General Late Payment Aggrieved Employees”);

5 (20) all individuals who were employed by Valiance Capital LLC or its predecessor,
6 merged or related entities for one or more pay periods in California as a non-
7 exempt, hourly employee and whose employment concluded at any time
8 between September 29, 2022 and continuing into the present. (“Valiance
Capital General Late Payment Aggrieved Employees”);

9 (21) all individuals who were employed by The Berkeley Group LLC or its
10 predecessor, merged or related entities for one or more pay periods in
11 California, who received sick pay, and whose employment concluded at any
12 time between September 29, 2022 and continuing into the present; (“Berkeley
Group Sick Pay Late Payment Aggrieved Employee”);

13 (22) all individuals who were employed by Valiance Capital LLC or its predecessor,
14 merged or related entities for one or more pay periods in California, who
15 received sick pay, and whose employment concluded at any time between
16 September 29, 2022 and continuing into the present; (“Valiance Capital Sick
Pay Late Payment Aggrieved Employee”);

17 Collectively, aggrieved employee groups 19-22 may be referred to as the “Late
18 Payment Aggrieved Employees.”

19 These groups may all collectively be referred to herein as aggrieved employees and/or all
20 aggrieved employees where appropriate.

21 3. Plaintiff and the Classes were employed by Defendants THE BERKELEY
22 GROUP LLC and VALIANCE CAPITAL LLC and any subsidiaries or affiliated companies and
23 Does 1 through 50 (who include individuals acting on behalf an employer within the meaning of
24 Labor Code § 558.1) within the State of California as a non-exempt, hourly employees, janitor,
25 housekeeper, or other similar position at some point between April 17, 2019 and continuing into
26 the present. Plaintiff is a former employee of Defendants who worked for Defendants in
27 Berkeley, California within Alameda County.
28

1 4. At times throughout their employment with Defendants including, but not limited
2 to within the past year, Plaintiff, the Class, and the aggrieved employees worked shifts in excess
3 of six (6) hours in a day, worked shifts in excess of eight (8) hours in a day, ten (10) hours in a
4 day, twelve (12) hours in a day and/or worked in excess of forty (40) hours in a week or more.

5 5. At times throughout their employment with Defendants, including but not limited
6 to within the past year, Plaintiff, the Class, and the aggrieved employees worked enough hours to
7 be eligible to receive overtime wages under IWC Wage Order Nos. 4-2001 and 5-2001 and/or
8 Labor Code section 510.

9 6. Defendants hire employees to work within the state of California who are covered
10 by California Industrial Welfare Commission Occupational Wage Order Nos. 4-2001 and 5-2001.
11 This includes individuals who Defendants misclassified as independent contractors, including but
12 not limited to housekeepers and janitorial employees.

13 7. Labor Code § 1197 states the California requirement that employees must be paid
14 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
15 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
16 “any employee receiving less than the legal minimum wage...to recover in a civil action the
17 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 4-2001 and 5-
18 2001 and other applicable wage orders obligate employers to pay each employee minimum wages
19 for all hours worked.

20 8. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
21 standard conditions of labor fixed by the commission shall be the maximum hours of work and
22 the standard conditions of labor for employees. The employment of any employee for longer
23 hours than those fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.”

25 9. Labor Code § 558.1 provides that “[a]ny employer or other person acting on behalf
26 of an employer, who violates, or causes to be violated, any provision regulating minimum wages
27 or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
28

1 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
2 employer for such violation.”

3 10. Plaintiff alleges on behalf of the State of California that Defendants (including
4 Doe 1) are and/or were other persons acting on behalf of an employer within the meaning of
5 Labor Code § 558.1 as it relates to all of the alleged allegations in this Complaint.

6 11. At times relevant hereto, Defendants have operated as a single entity that jointly
7 employed Plaintiff, the Class, and the aggrieved employees. Indeed, Defendants hold themselves
8 out to the general public as a single integrated enterprise operating under several different names.

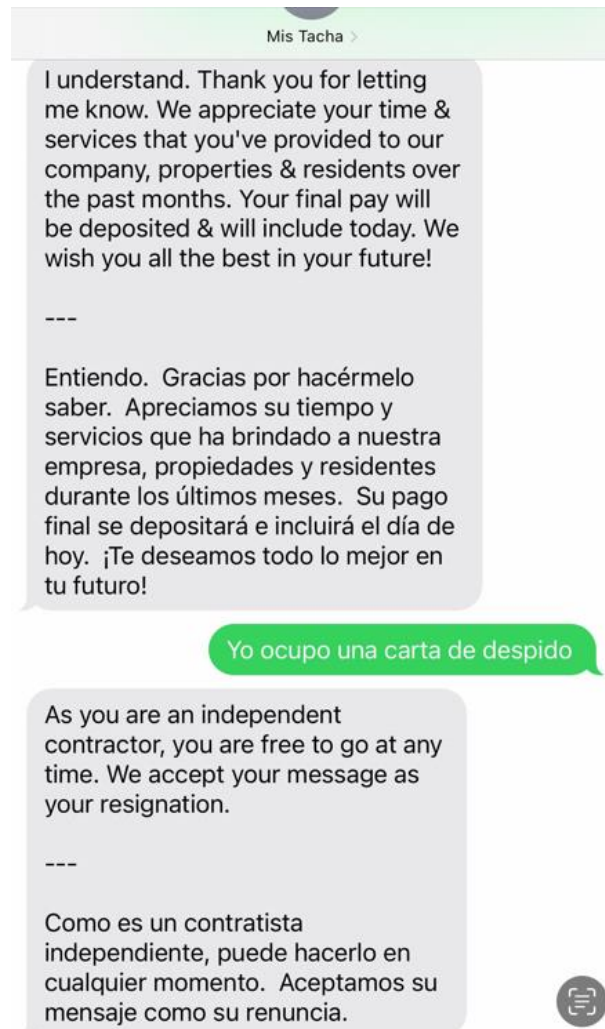
9 12. Defendants share common ownership and management and also share the same
10 corporate headquarters located at 2710 College Avenue Berkeley, CA 94705.

11 13. Additionally, at times throughout their employment, Plaintiff and at least some of
12 the Class Members and aggrieved employees were regularly and consistently subject to the
13 common policies utilized by Defendants. During their employment Plaintiff, the Class, and the
14 aggrieved employees were required to hold themselves out as employees and agents of
15 Defendants even when they were misclassified as independent contractors. Moreover, even
16 though Plaintiff and many of the class members and aggrieved employees were forced to wear
17 Berkely Group clothing and/or based upon information and on at least some occasions, they were
18 paid through accounts owned by and maintained by Valiance Capital

19 14. At times throughout their employment, including but not limited to within the past
20 year, Defendants engaged, suffered and permitted Plaintiff, the Class, and the aggrieved
21 employees to perform services from which they benefitted. Moreover, the aforementioned entities
22 had the right to exercise control over the wages, hours and/or working conditions over Plaintiff,
23 the Class, and the aggrieved employees at all relevant times herein, so as to be considered the
24 joint employers of Plaintiff, the Class, and the aggrieved employees. By reason of their status as
25 joint employers, they are each liable for damages for violations of the California Labor Code as to
26 Plaintiff, other class members, and the aggrieved employees as set forth herein.

15. At times during their employment, including but not limited to within the past year, Defendants misclassified some of the class members and aggrieved employees, including Plaintiff, housekeepers, and janitorial employees, as independent contractors.

16. Defendant Valiance Capital's Manager of Property Management and the Berkely Group's Operations Manager Tasha Haston admitted to the misclassification in writing, and as evidenced in more detail below, controlled the terms and conditions of employment for many of the Class Members and the aggrieved employees:



17. At times relevant hereto, Defendants either classified the Class and aggrieved employees as employees and/or intentionally misclassified them as independent contractors.

18. At times relevant hereto, Defendants maintained control over Plaintiff, the other Class Members, and the aggrieved employees that it misclassified as independent contractor's working conditions, the work performed (maintaining Defendants' properties) was a central part

1 of their business of providing housing to its customers and necessary to comply with city, state,
2 and county ordinances related to public health, safety, and habitability. Just as a hotel cannot
3 classify its employees as independent contractors, neither can Defendants classify its
4 housekeepers/janitors and other employees as independent contractors. Indeed, Valiance Capital's
5 Manager of Property Management and the Berkely Group's Operations Manager Tasha Haston
6 referred to the tasks being completed as being part of Plaintiff's job in at least one text message.
7 Moreover, Defendants required Plaintiff, many members of the Class, and at least some of the
8 aggrieved employees to wear a Berkely Group uniform when performing services and therefore
9 held out her and the other Class Members and aggrieved employees as employees:



19. At times relevant hereto, Defendants also advertised its “professional weekly
cleaning” and “24/7 maintenance and management.” Defendants also expressly hold out to the
general public that their “housekeeping team visits each property five days a week, ensuring that
our properties are kept up to the highest standards” as part of their business model of providing
“Best-of-the-Best in Amenities.”

20. At times relevant hereto, Defendants, also exercised complete control over the
manner in which work was to be performed including but not limited to, training employees,
advising employees where and when they could work, providing the tools needed to complete the

1 work, and not permitting any of the employees to realize a profit or loss dependent on their
2 managerial skill. As a result, Plaintiff, the Class, and the aggrieved employees were deprived of
3 overtime wages, meal periods, rest periods, did not receive accurate itemized wage statements,
4 were not reimbursed for expenses, in violation of Labor Code §§ 226.7, 510, 512, 1197.1, and
5 1198.

6 21. Labor Code § 1197 states the California requirement that employees must be paid
7 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
8 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
9 “any employee receiving less than the legal minimum wage...to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 4-2001 as well
11 as 5-2001 and other applicable wage orders obligate employers to pay each employee minimum
12 wages for all hours worked.

13 22. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and
15 the standard conditions of labor for employees. The employment of any employee for longer
16 hours than those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful.”

18 23. At times during the relevant time periods, including within the past year,
19 Defendants failed to pay Plaintiff, the Class, and all aggrieved employees for all hours worked
20 including, but not limited to, due to its policy and practice of misclassifying employees as
21 independent contractors, not paying for all hours worked (including for off-the-clock
22 communications and text messages), not paying the Class for required and/or expected pre-shift
23 activities, not paying employees for required and/or expected post-shift activities, impermissibly
24 rounding employees’ time entries (including start times, time entries associated with meal
25 periods, and stop times), failing to pay minimum wages in accordance with the local municipal
26 wage ordinances in effect for their job assignments, automatically deducting the time associated
27 with meal periods regardless of whether or not the employee received a meal period, for the time
28 associated with uniform maintenance, due to Defendants’ communications with employees

1 (whether by phone call, email, text message, or other method) while off-the-clock, failing to
2 record all hours worked, and for uncompensated time spent donning and doffing uniforms. As
3 such, Defendants failed to pay Plaintiff, the Class, and all aggrieved employees for all hours
4 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and IWC Wage Order Nos. 4-
5 2001 and 5-2001.

6 24. Labor Code § 510 requires an employer to compensate an employee who works
7 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
8 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
9 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
10 employees at no less than twice the regular rate of pay when an employee works more than
11 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
12 In accordance with Labor Code § 1194, Plaintiff, the Class, and the aggrieved employees could
13 not agree to work for a lesser wage.

14 25. In addition, Labor Code § 1197 states the California requirement that employees
15 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
16 local law, and any payment of less than the minimum wage is unlawful.

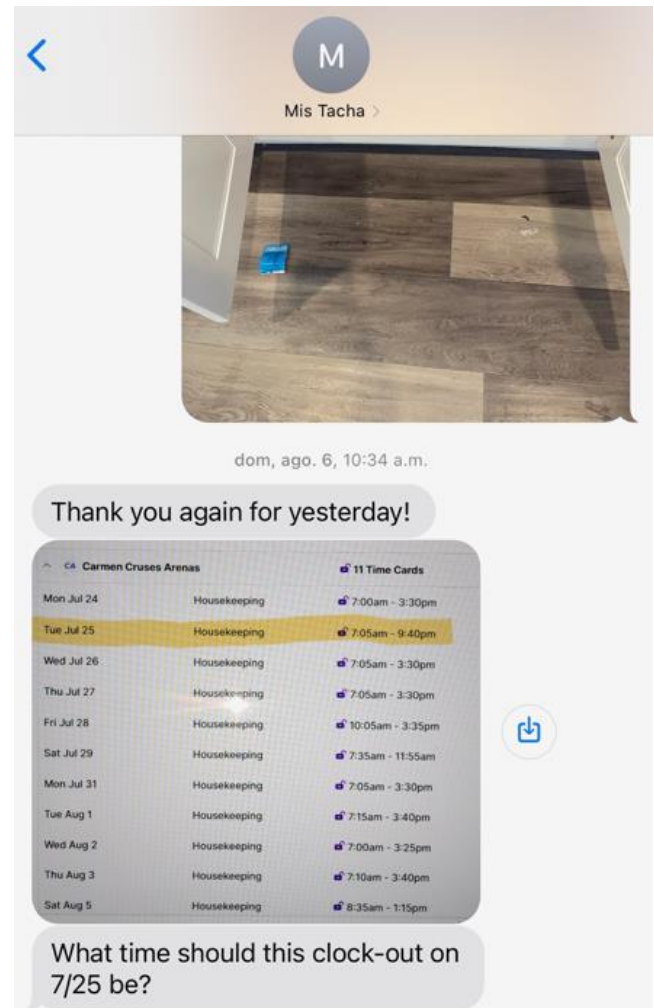
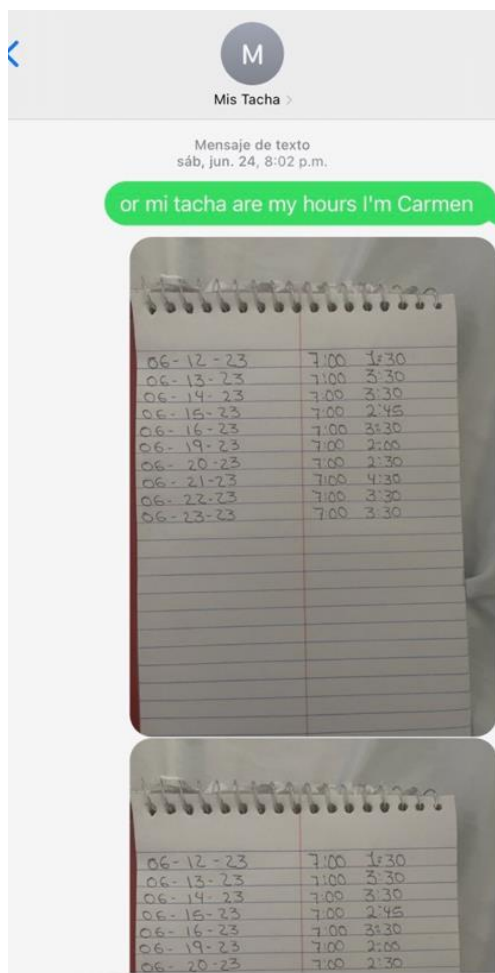
17 26. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment of any employee for longer
20 hours than those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.”

22 27. As discussed in detail above, at times during the relevant time period including
23 within the past year, Defendants engaged in a common policy and practice of due to its policy and
24 practice of misclassifying employees as independent contractors, paying the Class Members and
25 aggrieved employees a set hourly rate regardless of whether or not they worked overtime or
26 double time hours (over eight hours in a day and/or forty hours in a week for overtime and over
27 twelve (12) hours in a day for doubletime), not paying for all hours worked (including for off-the-
28 clock communications and text messages, not paying the Class and aggrieved employees for

1 required and/or expected pre-shift activities, not paying employees for required and/or expected
2 post-shift activities, impermissibly rounding employees' time entries (including start times, time
3 entries associated with meal periods, and stop times and in a non-neutral manner that favored the
4 employer), failing to pay minimum wages in accordance with the local municipal wage
5 ordinances in effect for their job assignments, automatically deducting the time associated with
6 meal periods regardless of whether or not an employee received a meal period, for the time
7 associated with uniform maintenance, due to Defendants' communications with employees
8 (whether by phone call, email, text message, or other method) while off-the-clock, failing to
9 record all hours worked, for uncompensated time spent donning and doffing uniforms, and for the
10 time spent working during interrupted meal and/or rest periods. As a result, Defendants often
11 misclassified overtime hours as regular hours resulting in the underpayment of overtime wages
12 and also failed to provide at least some of the Class and aggrieved employees with any
13 compensation for overtime hours whatsoever. For the same reasons as explained in detail above,
14 Defendants also improperly failed to provide compensation for and/or misclassified doubletime
15 hours as overtime hours or regular hours when the Class and aggrieved employees worked more
16 than twelve (12) hours in a day and/or more than eight (8) hours on the seventh day of work.
17 Defendants also had a common policy and practice of only paying overtime hours when an
18 employee works more than forty (40) hours in a week rather than eight (8) hours in a day.
19 "Employees must be compensated for each hour worked at either the legal minimum or the
20 contractual hourly rate, and compliance cannot be determined by averaging hourly
21 compensation." *Bluford vs. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872 (2013); *Armenta v.*
22 *Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005) ("While the averaging method utilized by the
23 federal courts to assess whether a minimum wage violation has occurred may be appropriate
24 when considered in light of federal public policy, it does not advance the policies underlying
25 California's minimum wage law and regulations."). Defendants also engaged in a pattern and
26 practice of sometimes only paying Plaintiff, the Class and the aggrieved employees for overtime
27 hours worked that were authorized in advance, but failed to pay for overtime hours unless the
28

hours worked were authorized in advance. The above-described conduct violated Labor Code §§ 510, 1197, 1197.1, and 1198.

28. Defendants were also aware of the hours worked by its misclassified employees including Plaintiff, Class Members, and the aggrieved employees, but failed to provide them overtime hours as it required Plaintiff, the Class, and the aggrieved employees to maintain records of the hours, but failed to provide them overtime where applicable. For instance, Plaintiff worked from 7:00 am to 4:30 pm on June 21, 2023, but did not receive overtime compensation for this work:



29. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer

1 may not employ an employee for a work period of more than ten (10) hours, without providing
2 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
3 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

4 30. Similarly, IWC Wage Order Nos. 4-2001, 5-2001, and other applicable wage
5 orders prohibit an employer from “employ[ing] any person for a work period of more than five
6 (5) hours without a meal period of not less than 30 minutes. IWC Wage Order Nos. 4-2001, 5-
7 1001 and other applicable wage orders further obligates employers to provide an employee to
8 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
9 workday that the meal period is not provided. Labor Code section 1198 prohibits an employer
10 from requiring an employee to work beyond the “standard conditions of labor fixed by the
11 commission...or under conditions of labor prohibited by the order.”

12 31. At times during the relevant time period, including within the past year,
13 Defendants failed to authorize and permit Plaintiff, the Class, and the aggrieved employees to
14 receive lawful meal periods, failed to advise them of their right to such meal periods, failed to
15 authorize and permit them to take timely first meal periods, and failed to authorize and permit
16 employees to take 30-minute meal periods on occasion. Defendants’ meal period policies and
17 practices also disincentivized and discouraged Plaintiff, the Class, and the aggrieved employees
18 from taking timely first meal periods within the first five (5) hours of their shift.

19 32. At times during the relevant time period, including within the past year,
20 Defendants also failed to authorize and permit Plaintiff, the Class, and the aggrieved employees
21 to receive lawful second meal periods when they worked more shifts in excess of ten (10) hours
22 per day. This includes, but is not limited to, failing to advise Plaintiff, the Class, and the
23 aggrieved employees of their right to take a second thirty (30) meal period on such shifts and/or
24 that they could not waive their second meal period if they worked a shift in excess of (12) hours.

25 33. At times during the relevant time period, Defendants’ meal period policies and
26 practices disincentivized and discouraged Plaintiff, the Class, and the aggrieved employees from
27 taking lawful meal periods due to issues related to understaffing, customer demands, and job
28 assignments. As a result of Defendants’ understaffing practices and policies, it was sometimes not

possible for Plaintiff, the Class, and the aggrieved employees to take meal periods and/or timely meal periods within the first five (5) hours of their shift. Notably, although Defendants' meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forced to forgo first and/or second meal periods (including, but not limited to on shifts worked in excess of 12 hours).

34. At times during the relevant time period including within the past year, Defendants further violated Labor Code § 512 by failing to authorize timely meal periods within the first (5) hours of an employees' shift if they were originally scheduled to work less than six (6) hours. Defendants' maintained a policy and practice of requiring Plaintiff, the Class, and the aggrieved employees to waive first meal periods when working shifts of less than six (6) hours. In doing so, Defendants pressured and disincentivized employees from taking meal periods within the first five (5) hours of their shift. As employees did not know in advance whether or not they would work more than six (6) hours and were not permitted to take meal periods and/or discouraged from taking meal periods on shifts of less than six hours, Plaintiff, the Class, and the aggrieved employees were not offered the opportunity to take a meal period within the first five (5) hours of their shift. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018). Neither Plaintiff, the Class, nor the aggrieved employees were given the opportunity to take a timely first meal period because they were not scheduled to be eligible to receive a meal period and did not know they were eligible for a timely period until after working more than six (6) hours at which point it was not possible for them to take a meal period within the first five (5) hours. Simply put, it's not possible for an employee to decide whether or not to take a timely first meal period when Defendants schedules them for a shift of six (6) hours or less such that they wouldn't have even known they were eligible for a meal period at the 5th hour.

35. At times during the relevant time period including within the past year, Defendants engaged in a common policy and practice of rounding Plaintiff, the Class, and the aggrieved employees' time punches such that they did not receive minimum wages for all hours worked,

1 overtime wages for the improperly rounded time punches, did not receive meal period premiums
2 for rounded time punches, and/or proper and lengthy meal periods.

3 36. Based upon information and belief, at times during the relevant time period
4 including within the past year, Defendants also adopted an automatic deduction policy and
5 practice whereby it automatically deducted thirty (30) minutes' worth of an employee's pay
6 regardless of whether or not the employee took a meal period and/or the full amount of their meal
7 period. As a result of Defendants' policy and practice of automatically deducting thirty (30)
8 minutes' worth of pay regardless of whether or not the employee took a meal period and/or the
9 length of the meal period, Defendants regularly failed to pay Plaintiff, the Class, and the
10 aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including
11 hours that qualified as overtime hours pursuant to IWC Wage Order No. 4-2001 and Labor Code
12 § 510. Defendants' rounded time entries for Plaintiff, the Class, and the aggrieved employees
13 were also unlawful and non-neutral because Defendants failed to provide compensation for all
14 hours worked well beyond 15 minutes and failed to round up in the employee's favor due,
15 including, but not limited to, its off-the-clock policies even though such rounding is
16 impermissible. As such, Defendants failed to pay Plaintiff, the Class, and the aggrieved
17 employees' wages for all hours worked (including overtime hours) and misclassified hours
18 worked as regular hours as a result of its auto-deduction and unlawful time recording policies and
19 procedures as discussed herein.

20 37. At times during the relevant time period including within the past year, Defendants
21 also failed to pay Plaintiff, the Class, and the aggrieved employees' meal period premiums for
22 each workday that the employees did not receive a compliant meal period and/or at the proper
23 rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a
24 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

26 38. Labor Code § 226.7 provides "an employer shall not require an employee to work
27 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
28 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage

1 Order No. 4-2001, an employer must authorize and permit all employees to take ten (10) minute
2 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM*
3 *Security Services, Inc.* 2 Cal. 5th 257, 269 (2016) (concluding that “during rest periods employers
4 must relieve employees of all duties and relinquish control over how employees spend their
5 time.”).

6 39. At times during the relevant time period including within the past year, Defendants
7 failed to provide Plaintiff, the Class, and the aggrieved employees with rest periods of not less
8 than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendants
9 failed to advise Plaintiff, the Class, and the aggrieved employees of their right to take rest periods,
10 their right to a second rest period when they worked shifts in excess of six (6) hours, but less than
11 eight (8) hours and of their right to a third rest period when they worked more than ten (10) hours.
12 Instead, Defendants regularly and consistently required employees to forgo a second rest period
13 when they worked shifts in excess of six (6) hours—including, but not limited to when the
14 employees worked shifts in excess of six (6) hours, but less than eight (8) hours—and failed to
15 authorize and permit employees who worked more than ten (10) hours a third rest period. Further,
16 on least some occasions, Defendants failed to provide rest periods to Plaintiff, the Class, and the
17 aggrieved employees. This includes, but is not limited to, due to Defendants failure to advise
18 employees of their right to rest periods on shifts of any length.

19 40. Moreover, at times during the relevant time period including within the past year,
20 Plaintiff, the Class, and the aggrieved employees were denied rest periods as a result of
21 Defendants’ understaffing practices and policies. Notably, although Defendants’ rest period
22 policies and practices are not compliant, they also pressured and coerced employees to forgo rest
23 periods and made it difficult for employees to take lawful duty-free rest periods both due to their
24 understaffing policies and practices and otherwise.

25 41. At times during the relevant time period including within the past year, Defendants
26 also failed to pay Plaintiff, the Class, and the aggrieved employees, rest period premiums for each
27 workday that the employees did not receive a compliant rest period and/or at the proper rate.
28 Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal

1 or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,
2 standard, or order of the Industrial Welfare Commission (“IWC”).

3 42. As to Plaintiff, the Wage Statement Subclass and the aggrieved employees, from at
4 least October 12, 2022 and continuing into the present, Defendants also failed to provide accurate
5 itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code §
6 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized
7 wage statement in writing showing:

- 8 (1) gross wages earned;
- 9 (2) total hours worked by the employee;
- 10 (3) the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece rate;
- 12 (4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item;
- 14 (5) net wages earned;
- 15 (6) the inclusive dates of the period for which the employee is paid;
- 16 (7) the name of the employee and only the last four digits of his or her social security
17 number or an employee identification number other than a social security number;
- 18 (8) the name and address of the legal entity that is the employer...;
- 19 (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee...

21 Similarly, Labor Code § 226(e) provides:

22 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
23 employer to comply with subdivision (a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
25 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
26 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
27 award of costs and reasonable attorney’s fees.

28 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
(a).

(ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

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

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

43. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees from at least October 12, 2022 and continuing into the present, due to Defendants' failure to pay Plaintiff, the Wage Statement Subclass, and the aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Wage Statement Subclass, and the aggrieved employees.

44. In addition, the wage statements issued to Plaintiff, the Wage Statement Subclass, and the aggrieved employees did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order Nos. 4-2001 and 5-2001 which requires employers to record "when the employee begins and ends each work period" Defendants failed to report the time that it knew that Plaintiff, the Wage Statement Subclass, and the aggrieved employees were working while off-the-clock and misreported hours based upon its policy of automatically deducting thirty (30) minutes for employees meal periods regardless of whether or not they received such meal periods and/or the length of such meal periods. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

45. Based upon information and belief, Defendants also failed to issue wage statements to the Class Members it classified as independent contractors during the past year.

46. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, and the aggrieved employees, minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

1 47. In addition to violating Labor Code § 226(a), Defendants also knowingly and
2 intentionally failed to include the number of hours worked and rates associated with several
3 categories of pay in violation of Labor Code section 226(a)(9).

4 48. Moreover, Plaintiff, the Class, and the Wage Statement Subclass, also suffered
5 legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily
6 and easily determine from the wage statements themselves the information required to be set forth
7 by Section 226(a), the information provided by Defendants were confusing and inaccurate. In
8 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
9 hours worked by the employee, the gross wages earned, the net wages earned, and all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at
11 each hourly rate by the employee for the reasons discussed above.

12 49. Under Labor Code §§ 201-202, an employer must provide an employee wages at
13 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
14 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
15 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
16 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

17 50. Defendants failed to Plaintiff, the Late Payment Subclass Members, and the
18 aggrieved employees any wages whatsoever within the time constraints of Labor Code section
19 201-202. Moreover, as described in detail above, Defendants failed to Plaintiff, the Late Payment
20 Subclass, and the aggrieved employees all wages owed, including but not limited to minimum
21 wages, overtime wages (including doubletime wages), meal period premiums, rest period
22 premiums, vacation wages, and sick pay (including at the correct rates) within time constraints
23 proscribed in Labor Code §§ 201-202. Thus, as result of Defendants’ faulty policies described
24 above, Plaintiff, the Late Payment Subclass Members, and the aggrieved employees left their
25 employment with Defendants without being compensated for each and every hour worked at the
26 appropriate rate in violation of Labor Code §§ 201, 202, and 203.

27 51. In addition, during the relevant time period and within the past year, Defendants
28 failed to pay Plaintiff, the Late Payment Subclass, and the aggrieved employees sick pay and/or at

1 the correct rate. This includes, but is not limited to, due to Defendants' failure to provide Plaintiff,
2 the Class Members it misclassified as independent contractors, and at least some of the aggrieved
3 employees with sick pay.

4 52. Labor Code § 246 requires employer to calculate sick leave pay based upon one of
5 the following formulas:

6 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
7 regular rate of pay for the workweek in which the employee uses paid sick time, whether
8 or not the employee actually works overtime in that workweek.

9 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
10 employee's total wages, not including overtime premium pay, by the employee's total
11 hours worked in the full pay periods of the prior 90 days of employment.

12 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
13 employer calculates wages for other forms of paid leave time.

14 Lab. Code § 246.

15 II.

16 **JURISDICTION AND VENUE**

17 53. This Court has subject matter jurisdiction over all causes of action asserted herein
18 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
19 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
20 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
21 laws of the State of California or is subject to adjudication in the courts of the State of California.

22 54. This Court has personal jurisdiction over Defendant THE BERKELEY GROUP
23 LLC because Defendant has caused injuries in the County of Alameda, including in Berkeley, and
24 State of California through their acts, and by their violation of the California Labor Code and
25 California law in Alameda County.

26 55. This Court has personal jurisdiction over Defendant VALIANCE CAPITAL LLC
27 because Defendant has caused injuries in the County of Alameda, including in Berkeley, and
28

1 State of California through their acts, and by their violation of the California Labor Code and
2 California law in Alameda County.

3 56. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure §395. Defendants operates within California and do business within Alameda
5 County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within
6 the State of California and the County of Alameda.

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

12 **III.**

13 **PARTIES**

14 **A. PLAINTIFF**

15 58. Plaintiff MARIA DEL CARMEN CRUSES ARENAS is a former employee of
16 Defendants who worked for Defendants in Alameda County.

17 59. Plaintiff and the Class were regularly required to:

18 a. Work hours without receiving compensation and/or minimum wages for all
19 hours worked;

20 b. Work overtime hours without receiving any compensation and/or the
21 proper amount of compensation;

22 c. Work without being provided lawful meal periods;

23 d. Work without being provided lawful rest periods;

24 e. Were denied meal/rest period premiums including payments at the proper
25 amounts;

26 f. Work without being provided an accurate itemized wage statement that
27 accurately indicates the gross wages earned, the total hours worked by the employee, the net
28

1 wages earned, as well as all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee;

3 g. Were deprived of wages that Defendants knew were due and owing, yet
4 failed to pay at the time of termination and/or within 72 hours of resignation for those former
5 employees who did not provide advance notice; and

6 **B. DEFENDANTS**

7 60. Defendant The Berkeley Group LLC is a California limited liability company with
8 a principal place of business is 2710 College Ave Berkeley, CA 94705. Upon information and
9 belief, Defendant employed Plaintiff and the Classes within California and in Alameda County,
10 including in Berkeley, California. Defendant has done and does business throughout the State of
11 California and in Alameda County.

12 61. Defendant Valiance Capital LLC is a California limited liability company with a
13 principal place of business is 2710 College Ave Berkeley, CA 94705. Upon information and
14 belief, Defendant employed Plaintiff and the Classes within California and in Alameda County,
15 including in Berkeley, California. Defendant has done and does business throughout the State of
16 California and in Alameda County.

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

25 63. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
28

legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

IV.

CLASS ACTION ALLEGATIONS

64. 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 Class and Subclasses composed of and defined as follows:

- (1) all individuals, including but not limited to housekeepers and janitorial employees, who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California at any point from April 17, 2019 and continuing into the present; (the “Berkeley Group Class”)
- (2) all individuals, including but not limited to housekeepers and janitorial employees, who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California at any point from April 17, 2019 and continuing into the present. (the “Valiance Capital Class”);
- (3) all non-exempt, hourly employees who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California at any point from April 17, 2019 and continuing into the present. (“The Berkeley Group Non-Exempt Class”);
- (4) all non-exempt, hourly employees who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California at any point from April 17, 2019 and continuing into the present. (“Valiance Capital Non-Exempt Class”);
- (5) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee, housekeeper, janitor, or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from April 17, 2019 and continuing into the present. (“Berkeley Group General Overtime Subclass”);
- (6) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee, housekeeper, janitor, or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from

1 April 17, 2019 and continuing into the present. (“Valiance General Overtime
2 Subclass”);

3 (7) all individuals who were employed by The Berkeley Group LLC or its predecessor,
4 merged or related entities in California as a non-exempt, hourly employee,
5 housekeeper, janitor, or other similar position and who worked a shift of more than
6 twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from
7 April 17, 2019 and continuing into the present. (“Berkeley Group Doubletime
8 Overtime Subclass”);

9 (8) all individuals who were employed by Valiance Capital LLC or its predecessor,
10 merged or related entities in California as a non-exempt, hourly employee,
11 housekeeper, janitor, or other similar position and who worked a shift of more than
12 twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from
13 April 17, 2019 and continuing into the present. (“Valiance Doubletime Overtime
14 Subclass”);

15 Collectively, groups 5-8 may be referred to as the “Overtime Subclass.”

16 (9) all individuals who were employed by The Berkeley Group LLC or its predecessor,
17 merged or related entities in California who worked one or more shifts of more than
18 six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
19 position from April 17, 2019 and continuing into the present. (“Berkeley Group
20 General Meal Period Subclass”);

21 (10) all individuals who were employed by Valiance Capital LLC or its predecessor,
22 merged or related entities in California who worked one or more shifts of more than
23 six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
24 position from April 17, 2019 and continuing into the present. (“Valiance Capital
25 General Meal Period Subclass”);

26 (11) all individuals who were employed by The Berkeley Group LLC or its predecessor,
27 merged or related entities in California who worked one or more shifts of more than
28 ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other
similar position from April 17, 2019 and continuing into the present. (“Berkeley
Group Second Meal Period Subclass”);

(12) all individuals who were employed by Valiance Capital LLC or its predecessor,
merged or related entities in California who worked one or more shifts of more than
six (6) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar
position from April 17, 2019 and continuing into the present. (“Valiance Capital
Second Meal Period Subclass”);

Collectively, groups 9-12 may be referred to as the “Meal Period Subclass.”

(13) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from April 17, 2019 and continuing into the present. (“Berkeley Group General Rest Period Subclass”);

(14) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from April 17, 2019 and continuing into the present. (“Valiance Capital Rest Period Subclass”);

(15) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than six (6) hours, but less than eight (8) hours in length from April 17, 2019 and continuing into the present. (“Berkeley Group General Fractional Rest Period Subclass”);

(16) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, housekeeper, janitor, or other similar position, who worked one or more shifts of more than six (6) hours, but less than eight (8) hours in length from April 17, 2019 and continuing into the present. (“Valiance Capital Fractional Rest Period Subclass”);

(17) all individuals who were employed by The Berkeley Group LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar position from April 17, 2019 and continuing into the present. (“Berkeley Group Third Rest Period Subclass”);

(18) all individuals who were employed by Valiance Capital LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt, hourly employee, housekeeper, janitor, or other similar position from April 17, 2019 and continuing into the present. (“Valiance Capital Third Rest Period Subclass”);

Collectively, groups 13-18 may be referred to as the “Rest Period Subclass.”

1 (19) all individuals who were employed by The Berkeley Group LLC or its predecessor,
2 merged or related entities in California as a non-exempt, hourly employee,
3 housekeeper, janitor, or other similar position from October 12, 2022 and continuing
into the present. (“Berkeley Group Wage Statement Subclass”);

4 (20) all individuals who were employed by Valiance Capital LLC or its predecessor,
5 merged or related entities in California as a non-exempt, hourly employee,
6 housekeeper, janitor, or other similar position from October 12, 2022 and continuing
into the present. (“Valiance Capital Wage Statement Subclass”);

7
8 Collectively, groups 19-20 may be referred to as the “Wage Statement Subclass.”

9 (21) all individuals who were employed by The Berkeley Group LLC or its predecessor,
10 merged or related entities for one or more pay periods in California as a non-exempt,
11 hourly employee, housekeeper, janitor, or other similar position and whose
employment concluded at any time between April 28, 2020 and continuing into the
12 present. (“Berkeley Group General Late Payment Subclass”);

13 (22) all individuals who were employed by Valiance Capital LLC or its predecessor,
14 merged or related entities for one or more pay periods in California as a non-exempt,
15 hourly employee, housekeeper, janitor, or other similar position and whose
employment concluded at any time between April 28, 2020 and continuing into the
16 present. (“Valiance Capital General Late Payment Subclass”);

17 Collectively, groups 21-22 may be referred to as the “Late Payment Subclass.”

18 These Classes and Subclasses may all collectively be referred to herein as the “Class”
19 where appropriate and for ease of reference.

20 These Classes and Subclasses may all collectively be referred to herein as the “Class”
21 where appropriate and for ease of reference.

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

25 66. This action has been brought and may properly be maintained as a class action
26 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
27 community of interest in the litigation and the Proposed Classes are easily ascertainable.
28

1 **A. Numerosity**

2 67. The potential members of the Proposed Classes as defined are each so numerous
3 that joinder of all the members of the Proposed Classes is impracticable. While the precise
4 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
5 is informed and believes that Defendants currently employ, and during the relevant time periods
6 employed to be more than 50 members or more of the Proposed Class and Subclasses at any
7 given time.

8 68. Plaintiff alleges that Defendants' employment records would provide information
9 as to the number and location of all Proposed Class members. Joinder of all members of the
10 Proposed Class and Subclasses is not practicable.

11 **B. Commonality**

12 69. There are questions of law and fact common to the Proposed Classes¹ that
13 predominate over any questions affecting only individual Proposed Class Members. These
14 common questions of law and fact include, without limitation:

15 a. Whether Defendants misclassified Class Members, including housekeepers
16 and janitorial employees, as independent contractors.

17 b. Whether Defendants failed to pay minimum wages for all hours worked as
18 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order Nos. 4-2001 and
19 5-2001 to the Class.

20 c. Whether Defendants failed to pay wages and/or overtime compensation
21 and at the correct rate as required by Labor Code § 510 to the Overtime Class;

22 d. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
23 Nos. 4-2001 and 5-2001, by failing to authorize and permit the Meal Period Class Members to
24 take a timely, uninterrupted, duty-free meal period within the first five (5) hours of their shift, a
25 first meal period and/or a timely first meal period within the first five (5) hours when they were
26 originally schedule to work less than six (6) hours, but worked more than six (6) hours, second

27 _____
28 ¹ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 meal periods, failed to provide thirty (30) minute meal periods, rounded the time entries
2 associated with meal periods and/or failed to record the time associated with meal periods, as well
3 as their failure to pay the Meal Period Class one additional hour of pay at the employees' at their
4 regular rate of compensation when they did not receive a compliant meal period;

5 e. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 4-2001
6 and 5-2001, by failing to inform Plaintiff and the Rest Period Class of their right to receive a ten
7 (10) minute duty-free rest period for every four hours of work or major fraction thereof, failing to
8 relieve employees of all control during rest periods, failing to authorize fractional rest periods
9 when employees worked more than six (6) hours, but less than eight (8) hours, failed to authorize
10 and permit third rest periods, and by failing to compensate said employees one (1) additional hour
11 of pay at the employee's regular rate of compensation in lieu of rest periods;

12 f. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC
13 by failing to provide wage statements or an accurate itemized wage statements that accurately
14 indicated, the total hours worked, the gross wages earned, all deductions from wages, the net
15 wages earned, as well as all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee to the Wage
17 Statement Subclass;

18 g. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
19 pay compensation due and owing at the time that the Late Payment Class' employment with
20 Defendants concluded;

21 h. Whether Defendants violated § 17200 et seq. of the Business & Professions
22 Code by engaging in the acts previously alleged against the Class;

23 **C. Typicality**

24 70. The claims of Plaintiff are typical of the claims of the Proposed Class and
25 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries
26 and damages arising out of and caused by Defendants' common course of conduct in violation of
27 laws, regulations that have the force and effect of law, and statutes as alleged herein.
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76. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

77. As set forth above, during statutory period applicable to the claims in this action, including within the past year, and continuing into the present, Plaintiff and the Class were not compensated for all hours worked as a result of Defendants' policies and practices described in detail above.

78. In failing to pay Plaintiff and the Class for all hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the class period.

VI.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants]

79. Plaintiff, on behalf of herself and the Class and the Overtime Subclass realleges and incorporates by reference all previous paragraphs.

80. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a lesser wage.

81. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

82. Similarly, Labor Code § 1198 provides that “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.”

83. As discussed in detail above, at times from April 17, 2019 and continuing into the present, Defendants failed to pay Plaintiff, the Class, and the Overtime subclass with wages for all hours worked (including overtime hours and doubletime hours) and failed to pay overtime wages at the proper rate.

84. Defendants conduct, as described above was willful.

85. As a result of the unlawful acts of Defendants, Plaintiff, the Class, and the Overtime Subclass have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE
§§ 226.7 and 512; IWC WAGE ORDER NOS. 4-2001 and 5-2001
[Against All Defendants]

86. Plaintiff, on behalf of herself, the Class, and the Meal Period Subclass realleges and incorporates by reference all previous paragraphs.

87. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each non-compliant meal period an 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.

88. At points between April 17, 2019 and continuing into the present, Plaintiff, the Class, and the Meal Period Subclass worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

89. At points between April 17, 2019 and continuing into the present, Plaintiff, the Class, and the Meal Period Subclass worked shifts in excess of ten (10) hours and twelve (12) hours.

90. During the statutory period applicable to their claims, Plaintiff, the Class, and the Meal Period Subclass were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a lawful meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

91. Based upon information and belief, at times between April 17, 2019 and continuing into the present, on the rare occasion, if any, that Defendants paid a meal period premium, Defendants improperly paid the premium at the employee's hourly base rate instead of at their regular rate.

92. Pursuant to Labor Code §226.7, Plaintiff, the Class, and the Meal Period Subclass Members are entitled to damages in an amount equal to one (1) hour of wages per non-compliant meal break, per day in a sum to be proven at trial.

VIII.
FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER NO. 7-2001, § 12
[Against All Defendants]

93. Plaintiff, on behalf of herself, the Class, and the Rest Period Subclass, and the, realleges and incorporates by reference all previous paragraphs.

94. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order Nos. 4-2001 and 5-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

1 95. At times during the relevant period and within the past year, Defendants failed to
2 provide Plaintiff, the Class, and the Rest Period Subclass with rest periods of not less than ten
3 (10) minutes for every major fraction of four (4) hours worked in violation of Labor Code § 226.7
4 and IWC Wage Order Nos. 4-2001 and 5-2001 and other applicable wage orders. Instead,
5 Defendants regularly and consistently failed to authorize and permit rest periods, and required
6 Plaintiff, the Class, and the Rest Period Subclass to forgo rest periods and/or failed to relieve
7 them of all duties for the reasons described herein.

8 96. At times during the relevant time period within the past year, Plaintiff, the Class,
9 and the Rest Period Subclass were denied rest periods as a result of Defendants' understaffing
10 practices and policies. Notably, although Defendants' rest period policies and practices are not
11 compliant, they also pressured and coerced employees to forgo rest periods and made it difficult
12 for employees to take lawful duty-free rest periods both due to their understaffing policies and
13 practices and otherwise.

14 97. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
15 Class, and the Rest Period Subclass were not compensated with one (1) hours' worth of pay at
16 their regular rate of compensation when they were not provided with a compliant rest period
17 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

18 98. Based upon information and belief, during the relevant time period and within the
19 past year, further, on the rare occasion if any that Defendants paid rest period premiums,
20 Defendants improperly paid the premium to Plaintiff, the Class, and the Rest Period Class at the
21 employee's hourly base rate instead of at their regular rate.

22 99. Based upon the foregoing, at times pertinent hereto, Defendants failed to authorize
23 and permit Plaintiff, the Class, and the Rest Period Subclass, to take duty-free rest periods of not
24 less than ten (10) minutes net for every major fraction of four (4) hours worked.

25 100. Pursuant to Labor Code § 226.7, Plaintiff, the Class, and the Rest Period Subclass
26 are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a
27 sum to be proven at trial.

IX.
FIFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff and the Wage Statement Subclass]

101. Plaintiff, on behalf of herself and the Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

102. From at least October 12, 2022 and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Similarly, Labor Code § 226(e) provides:

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

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

103. As to Plaintiff, the Wage Statement Subclass, from at least October 12, 2022 and continuing into the present, due to Defendants' failure to pay Plaintiff and the Wage Statement Subclass, all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement Subclass.

104. In addition, the wage statements issued to Plaintiff and the Wage Statement Subclass did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order Nos. 4-2001 and 5-2001 which requires employers to record "when the employee begins and ends each work period" Defendants failed to report the time that it knew that Plaintiff and the Wage Statement Subclass were working while off-the-clock and misreported hours based upon its policy of automatically deducting thirty (30) minutes for employees meal periods regardless of whether or not they received such meal periods and/or the length of such meal periods. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

105. Based upon information and belief, Defendants also failed to issue wage statements to the Class Members it classified as independent contractors during the past year.

106. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

1 107. In addition to violating Labor Code § 226(a), Defendants also knowingly and
2 intentionally failed to include the number of hours worked and rates associated with several
3 categories of pay in violation of Labor Code section 226(a)(9).

4 108. Moreover, Plaintiff, the Class, and the Wage Statement Subclass, also suffered
5 legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily
6 and easily determine from the wage statements themselves the information required to be set forth
7 by Section 226(a), the information provided by Defendants were confusing and inaccurate. In
8 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
9 hours worked by the employee, the gross wages earned, the net wages earned, and all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at
11 each hourly rate by the employee for the reasons discussed above.

12 109. Moreover, Defendants undeniably knew when paying that the wage statements it
13 issued did not include and/or accurately list, the gross wages earned, the net wages earned, and all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT*
16 *LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly
17 and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not
18 providing total hours worked to plaintiff or other employees paid on commission” even though it
19 believed that employees paid solely on commission or commission and salary “are exempt and
20 therefore we do not record hours on a wage statement.”).

21 110. Defendants also failed to both comply with and create a policy that complied with
22 Labor Code § 226 prior to the filing of this lawsuit and having been previously sued in 2019 for
23 violating Labor Code section 226. Labor Code § 226(e)(3) provides that when determining
24 whether or not an employer’s violation of Labor Code § 226(a) was knowing and intentional, “the
25 relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in
26 compliance with a set of policies, procedures, and practices that fully comply with this section.”
27 Accordingly, Defendants’ conduct was knowing and intentional within the meaning of Labor
28 Code § 226(e).

111. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. See Lab. Code § 226(e). Plaintiff and the Wage Statement Subclass seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

X.

SIXTH CAUSE OF ACTION

**WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Late Payment Class/Subclass]**

112. Plaintiff on behalf of herself and the Late Payment Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

113. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

114. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

115. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to all minimum wages, overtime wages, meal period premiums, rest period premiums, sick pay, and based upon information and belief, vacation pay within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

116. At the time of Plaintiff, the other members of the Late Payment Class' separation from Defendants, the sums were certain and known to Defendants.

117. As a result, Defendants are liable to Plaintiff and the Late Payment Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XI.
SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff and the Class]

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

119. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

120. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California. As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California's Labor Code.

121. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and

1 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
2 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
3 privileges guaranteed to all employees under law.

4 122. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of § 17200 et seq. of the Business & Professions Code.

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

9 124. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
10 Class, others similarly situated, other businesses, and the general public have been damaged in a
11 sum as may be proven.

12 125. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
13 wages, but also the market value of the loss of the statutory protections and the cost to other
14 employers of providing proper pay, breaks, and complying with the California Labor Code
15 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
16 (2015).

17 126. Unless restrained, Defendants will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
19 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
20 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
21 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
22 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
23 Proposed Classes the money Defendants have unlawfully failed to pay.

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XII.

EIGHTH CAUSE OF ACTION

**PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF
LABOR CODE §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246-248, 256, 510,
512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2776-2787, 2802, 2810.5, 3700,
and 3700.5, and IWC Wage Order No. 4-2001**

127. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

128. Plaintiff filed her PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 et seq. As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

129. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, et seq. because of Defendants’ violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2776-2787, 2802, 2810.5, 3700, and 3700.5, and IWC Wage Order No. 4-2001.

130. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

\$100 for the initial violation per employee per pay period; and

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

131. Labor Code § 226.8 makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Labor Code § 226.8 provides:

(a) it is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

132. Labor Code § 2776 provides:

Section 2775 and the holding in *Dynamex* do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(a) If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business or to a public agency or quasi-public corporation (“contracting business”), the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business demonstrates that all of the following criteria are satisfied:

(1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider’s employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

(3) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.

(4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

1 (5) The business service provider maintains a business location, which may include the
2 business service provider's residence, that is separate from the business or work
location of the contracting business.

3 (6) The business service provider is customarily engaged in an independently
4 established business of the same nature as that involved in the work performed.

5 (7) The business service provider can contract with other businesses to provide the
6 same or similar services and maintain a clientele without restrictions from the hiring
entity.

7 (8) The business service provider advertises and holds itself out to the public as
8 available to provide the same or similar services.

9 (9) Consistent with the nature of the work, the business service provider provides its
10 own tools, vehicles, and equipment to perform the services, not including any
proprietary materials that may be necessary to perform the services under the contract.

11 (10) The business service provider can negotiate its own rates.

12 (11) Consistent with the nature of the work, the business service provider can set its
13 own hours and location of work.

14 (12) The business service provider is not performing the type of work for which a
15 license from the Contractors' State License Board is required, pursuant to Chapter 9
(commencing with Section 7000) of Division 3 of the Business and Professions Code.

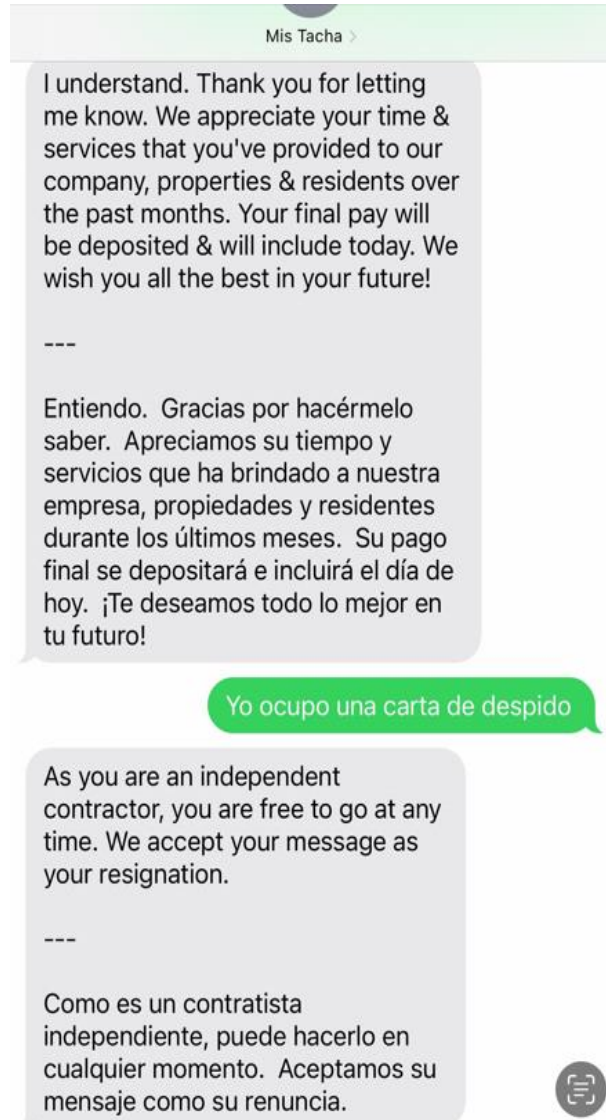
16 (b) When two bona fide businesses are contracting with one another under the conditions
17 set forth in subdivision (a), the determination of whether an individual worker who is not
18 acting as a sole proprietor or formed as a business entity, is an employee or independent
contractor of the business service provider or contracting business is governed by Section
2775.

19 (c) This section does not alter or supersede any existing rights under Section 2810.3.

20 133. At times within the past year, neither Plaintiff nor the other aggrieved employees
21 were allowed to set their own hours and locations of work, they did not have control over their
22 working conditions and were required to work in association with others who were misclassified
23 by Defendants, they did not have their own business licenses, they did not advertise and hold
24 themselves out to the public as available to provide the same or similar services, and did not
25 comply with the other exceptions to Labor Code § 2775 as noted in Labor Code § 2776.

26 134. At times within the past year, Defendants willfully classified employees, including
27 but not limited to janitorial and house-keeping employees sometimes referred to as
28

1 “Housekeeper” as independent contractors as Defendant Valiance Capital’s Manager of Property
2 Management and the Berkely Group’s Operations Manager Tasha Haston admitted to the
3 misclassification in writing, and as evidenced in more detail below, controlled the terms and
4 conditions of employment:



23 ///

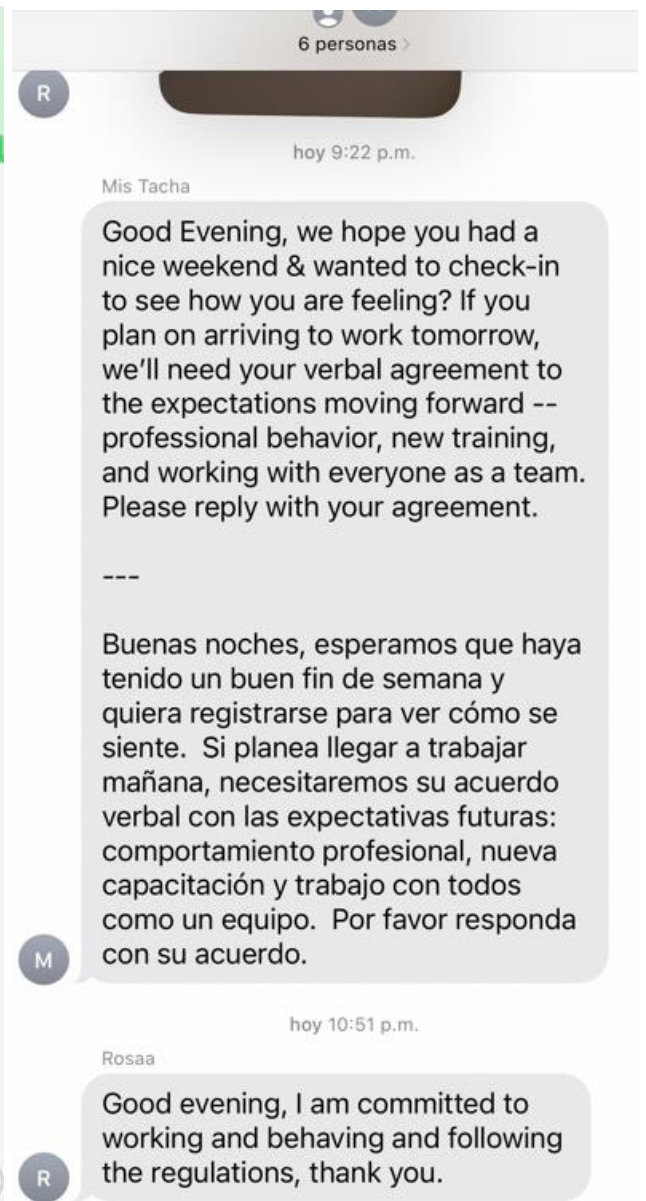
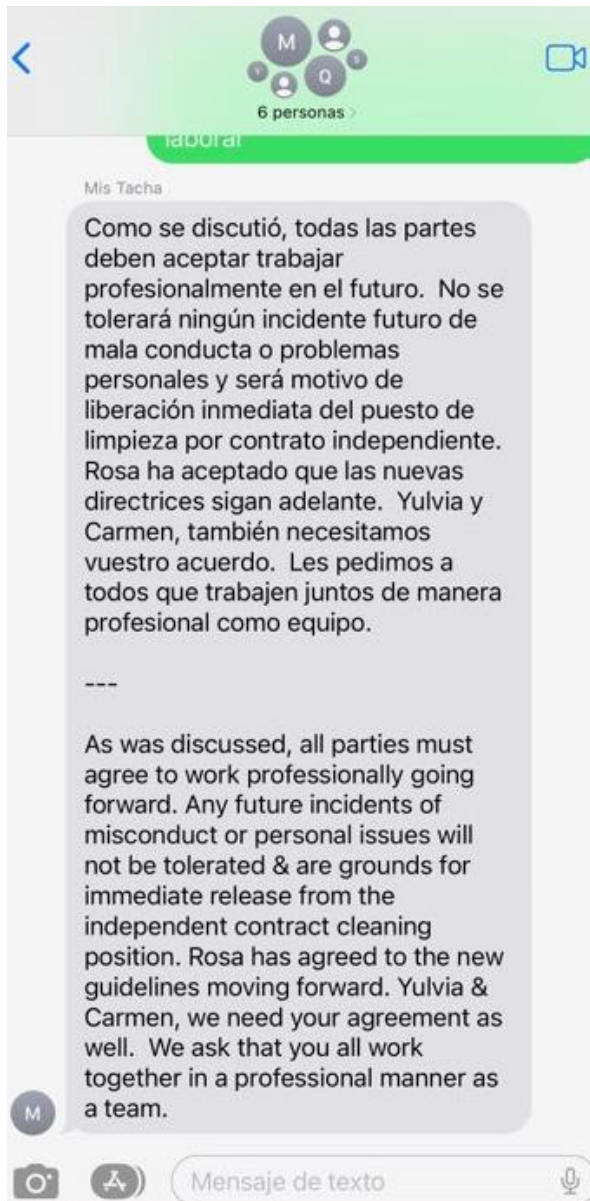
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19 135. At times during their employment and within the past year, Defendants maintained
20 control over Plaintiff and the other aggrieved employees that it misclassified as independent
21 contractor's working conditions, the work performed (maintaining Defendants' properties) was a
22 central part of their business of providing housing to its customers and necessary to comply with
23 city, state, and county ordinances related to public health, safety, and habitability. Just as a hotel
24 cannot classify its employees as independent contractors, neither can Defendants classify its
25 housekeepers/janitors and other employees as independent contractors. Indeed, Valiance Capital's
26 Manager of Property Management and the Berkely Group's Operations Manager Tasha Haston
27 referred to the tasks being completed as being part of Plaintiff's job in at least one text message.
28

Moreover, Defendants required Plaintiff to wear a Berkely Group uniform when performing services and therefore held out her and the other aggrieved employees as employees:



136. At times within the past year, Defendants also set the locations of work for the aggrieved employees:

mar, jul. 25,

Mis Tacha

Carmen - 3rd Floor, bathrooms, laundry machines, floors, middle stairwell + rooftop patio

2350 Prospect -

- Wed - Rosa, kitchen, floors & 2nd floor bathrooms

- Thurs - Yulvia - kitchen, floors & 3rd floor bathrooms

- Fri - Carmen - kitchen, floors & outdoor furniture

3228 Adeline -

- Thurs - Rosa - floors, 5th floor community room & laundry rooms (no 1st floor apartment).

Please message back separately to me what areas you were able to clean each day and the amount of time it took.

We appreciate you & look forward to meeting again to hear your ideas to help plan for a more comfortable working environment.



1 137. At times within the past year, Defendants, also exercised control over the manner
2 in which work was to be performed including but not limited to, training employees, advising
3 employees where and when they could work, providing the tools needed to complete the work,
4 and not permitting any of the employees to realize a profit or loss dependent on their managerial
5 skill. As a result, the aggrieved employees were deprived of overtime wages, meal periods, rest
6 periods, did not receive accurate itemized wage statements, were not reimbursed for expenses,
7 and were forced to pay their share of employer payroll taxes in violation of Labor Code §§ 226.7,
8 510, 512, 558, 1197.1, 1198, 2802.

9 138. Based on the foregoing, at times during the past year, Defendants engaged in this
10 pattern of misclassifying at least some of their workers as independent contractors in order to
11 avoid paying their employees overtime, providing meal/rest periods, reimbursing employees, and
12 paying the employer's portion of payroll taxes and providing workers compensation insurance.
13 As such, the State of California is entitled to recover penalties under Labor Code § 226.8 for
14 Defendants' willful misclassification of the aggrieved employees.

15 139. Labor Code § 3700 states that:

16 Every employer except the state shall secure the payment of compensation in one or more
17 of the following ways:

18 (a) By being insured against liability to pay compensation by one or more insurers duly
19 authorized to write compensation insurance in this state.

20 (b) By securing from the Director of Industrial Relations a certificate of consent to self-
21 insure either as an individual employer, or as one employer in a group of employers,
22 which may be given upon furnishing proof satisfactory to the Director of Industrial
23 Relations of ability to self-insure and to pay any compensation that may become due to his
24 or her employees...

25 140. Labor Code § 3700.5 authorizes penalties against an employer who fails to obtain
26 workers' compensation insurance:

27 (a) The failure to secure the payment of compensation as required by this article by one
28 who knew, or because of his or her knowledge or experience should be reasonably
expected to have known, of the obligation to secure the payment of compensation, is a
misdemeanor punishable by imprisonment in the county jail for up to one year, or by a
fine of up to double the amount of premium, as determined by the court, that would
otherwise have been due to secure the payment of compensation during the time

1 compensation was not secured, but not less than ten thousand dollars (\$10,000), or by both
2 that imprisonment and fine.

3 (b) A second or subsequent conviction shall be punished by imprisonment in the county
4 jail for a period not to exceed one year, by a fine of triple the amount of premium, or by
5 both that imprisonment and fine, as determined by the court, that would otherwise have
6 been due to secure the payment of compensation during the time payment was not
secured, but not less than fifty thousand dollars (\$50,000).

7 (c) Upon a first conviction of a person under this section, the person may be charged the
8 costs of investigation at the discretion of the court. Upon a subsequent conviction, the
9 person shall be charged the costs of investigation in addition to any other penalties
10 pursuant to subdivision (b). The costs of investigation shall be paid only after the payment
11 of any benefits that may be owed to injured workers, any reimbursement that may be
owed to the director for benefits provided to the injured worker pursuant to Section 3717,
and any other penalty assessments that may be owed.

12 141. At times during their employment and within the past year, Defendants improperly
13 classified some of the aggrieved employees as independent contractors, including but not limited
14 to its housekeepers and janitorial employees. Defendants failed to obtain workers' compensation
15 coverage for these individuals despite the fact that its sole business is a single integrated property
16 management and investment company and the aggrieved employees were directly engaged in
17 maintaining the properties and even while wearing corporate clothing/uniforms provided by
18 Defendants.

19 142. At times during their employment and within the past year, Defendants failed to
20 obtain workers' compensation insurance for the aggrieved employees that it misclassified as
21 independent contractors. As such, Defendants violated Labor Code §§ 3700 and 3700.5.

22 143. Labor Code § 2810.5 requires an employer to provide, at the time of hiring, to
23 each employee a "written notice, in the language the employer normally uses to communicate
24 employment-related information to the employee, containing the following information:

25 (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
26 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

27 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
allowances.

28 (C) The regular payday designated by the employer in accordance with the requirements of
this code.

- 1 (D) The name of the employer, including any “doing business as” names used by the
2 employer.
3 (E) The physical address of the employer’s main office or principal place of business, and a
4 mailing address, if different.
5 (F) The telephone number of the employer.
6 (G) The name, address, and telephone number of the employer’s workers’ compensation
7 insurance carrier.
8 (H) That an employee: may accrue and use sick leave; has a right to request and use
9 accrued paid sick leave; may not be terminated or retaliated against for using or requesting
10 the use of accrued paid sick leave; and has the right to file a complaint against an employer
11 who retaliates.
12 (I) Any other information the Labor Commissioner deems material and necessary

13 144. At times during the past year, Defendants failed to provide at least some of the
14 aggrieved employees with the written notice required by Labor Code § 2810.5 and also failed to
15 provide some of the required information. Defendants’ failure to provide such information varied
16 from time to time, but based upon information and belief, included violations of all nine
17 subdivisions of Labor Code § 2810.5(a).

18 145. The PAGA penalties will be allocated 75% to the Labor Workforce Development
19 Agency and 25% to the affected employees. These penalties may be stacked separately for each
20 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*
21 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
22 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
23 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
24 PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)
25 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
26 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
27 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations
28 of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM
(JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that
although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different
Labor Code violations.”); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-

1 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
2 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
3 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

4 146. There is currently a split of authority regarding which PAGA penalties apply to
5 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355
6 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*
7 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to
8 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates
9 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
10 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
11 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
12 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
13 of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other
14 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it
15 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or
16 2699 penalties for Defendant’s violations of Labor Code § 226(a).

17 147. Labor Code § 210 provides that “in addition to, an entirely independent and apart
18 from, any other penalty provided in this article, every person who fails to pay the wages of each
19 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
20 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
21 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
22 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

23 148. As a result of the faulty compensation policies and practices described in detail
24 above, the State of California is entitled to recover penalties under Labor Code § 210 through
25 PAGA.

26 149. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
27 causes to be violated...any provision regulating hours and days of work in any order of the
28 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial

1 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
3 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
4 period for which the employee was underpaid...” Based upon the above factual allegations
5 related to overtime violations, Plaintiff and the aggrieved employees are entitled to recover civil
6 penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup.*
7 *Ct.* 8 Cal.5th 175 (2019).

8 150. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
9 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
10 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
11 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
12 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
13 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
14 period for which the employee is underpaid regardless of whether the initial violation is
15 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
16 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
17 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
18 penalties for violations of Labor Code § 1197.1.

19 151. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code
20 section 203 under PAGA and provides for “a civil penalty in an amount not exceeding 30 days’
21 pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los*
22 *Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th
23 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s
24 failure to timely pay wages upon separation was willful is a “civil penalty”). To the extent
25 permitted by law Plaintiff seeks Labor Code § 2699.3 penalties at either the default amount or the
26 amount proscribed by Labor Code § 256 for Defendant’s violations of Labor Code §§ 201 and
27 202.
28

152. As described in detail above, Defendants willfully failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to overtime wages and/or all sick wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, and 256.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;

2. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff and each Class Member from April 17, 2019 and continuing into the present as may be proven;

3. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff, each Class Member from April 17, 2019 and continuing into the present as may be proven;

4. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid meal period premiums from April 17, 2019 and continuing into the present as may be proven;

5. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid rest period premiums from April 17, 2019 and continuing into the present as may be proven;

6. For penalties pursuant to Labor Code § 226(e) for violations 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 an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized

1 wage statements issued to Plaintiff and the Wage Statement Class from October 12, 2022 and
2 continuing into the present as may be proven;

3 7. An award to Plaintiff and the Late Payment Class/Subclass of waiting time
4 penalties in the amount of up to 30 days' wages;

5 8. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
7 profits, in an amount as may be proven;

8 9. An order enjoining Defendant and its agents, servants, and employees, and all
9 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
10 Members proper compensation for all hours worked, overtime hours worked, meal period
11 premiums, rest period premiums, from failing to provide timely first meal periods within the first
12 five (5) hours of an employee's shift, from failing to provide proper rest periods, from failing to
13 pay meal/rest period premiums at the employee's regular rate instead of at their hourly base rate,
14 from paying reporting time pay at the employee's base rate instead of at their regular rate, and
15 from timely failing to pay all wages.

16 10. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
17 employees because of Defendants' violation of Labor Code §§ 200, 201, 202, 203, 204, 210, 226,
18 226.3, 226.7, 226.8, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
19 1198.5, 1199, 2776-2787, 2802, 2810.5, 3700, and 3700.5, and IWC Wage Order No. 4-2001;

20 11. A declaratory judgment that Defendants' violated the Labor Code as specified
21 herein;

22 12. An award of pre-judgment and post-judgment interest to the extent permitted by
23 law;

24 13. An award providing for payment of costs of suit;

25 14. An award of attorneys' fee, including but not limited to, pursuant to Labor Code
26 §§ 218.5 and 2699 and Code of Civil Procedure § 1021.5; and

27 15. Such other and further relief as this Court may deem proper and just.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury for causes of action 1-6, but not claim 7 (unfair competition) and 8 (PAGA) for which a bench trial is required by law.

DATED: December 12, 2023

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON
Attorneys for Plaintiff, the Proposed
Class, and the aggrieved employees

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1880 Century Park East, Suite 511, Los Angeles, California 90067.

On **December 12, 2023**, I served all interested parties in this action the following documents described as on the persons below as follows: **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

CSC – Lawyers Incorporating Service as Agent for service of process for The Berkeley Group LLC
270 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

CSC – Lawyers Incorporating Service as Agent for service of process for Valiance Capital LLC
270 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

[XX] (BY MAIL): I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited at the U.S.P.S. Post Office located at 10250 Santa Monica Blvd, Lower 1700, Los Angeles, California 90067 on that same day with postage fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **December 12, 2023**, at Los Angeles, California.


Brigitte Bahari