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County of Imperial

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

ANA CORONA VIZCARRA in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

SURE HELPLINE CENTER, a California
Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. ECU003285

COMPLAINT FOR:

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***
6. **FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.***

COMES NOW Plaintiff ANA CORONA VIZCARRA ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for her complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the state of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of Imperial, state of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant SURE HELPLINE CENTER (Referred to herein as "Defendants" or "SHC"), was and is a California Corporation doing business throughout the state, including the County of Imperial, state of California. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
4. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the permission and consent of the co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said defendants. Wherever it is alleged herein that any act or omission was done or committed by

any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same act or omission was also done and committed by each and every defendant named as a DOE, both separately and in concert with the named Defendant or Defendants.

5. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, including DOES 1 through 10, are and at all times herein mentioned were either individuals, sole proprietorships, partnerships, registered professionals, corporations, alter egos or other legal entities which were licensed to do and/or were doing business in the County of Imperial, state of California at all times relevant to the subject matter of this action.

FACTUAL BACKGROUND

6. Plaintiff was employed by Defendants from approximately April 14, 2021, through September 22, 2023. Throughout her employment with Defendants, Plaintiff performed her job in a capable, and competent manner.
7. Throughout the term of their employment, Plaintiff and all other aggrieved employees were, and currently are, denied the benefits and protections of the Labor Code due to Defendants' institutionalized pay practices, standard as to all of Defendants' California-based employees.
8. On October 19, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to the California Labor & Workforce Development Agency ("LWDA"). A copy of the letter was mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code and Business and Professions Code violated by Defendants, as well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)
9. The statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded.

REPRESENTATIVE ALLEGATIONS

10. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits

of the Labor Code due to Defendants' standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

11. Plaintiff brings this action on the grounds that she and other current and former aggrieved employees of Defendants were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed One-Hundred (100) members.

12. The approximately One-Hundred (100) aggrieved employees are comprised of Defendants' current or former California-based employees.

13. The questions of law and fact common to all aggrieved employees arising from Defendants' actions include, among others, the following:

- a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
- b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;
- c. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and 226.7, in that Defendants' written policies are not compliant with California law, and Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in

accordance with law;

e. Whether Defendants failed to properly calculate and pay its employees overtime compensation or Meal and Rest Period Premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of all employee benefits and other non-discretionary compensation; and

f. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of Labor Code section 2802.

14. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the state of California, including, but not limited to, California Labor Code section 2698 *et seq.*

15. At all times mentioned herein, Defendants are and were “employers” as that term is used within the relevant sections of the California Labor Code.

16. Plaintiff has exhausted her administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute.

17. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants’ standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

18. Plaintiff hereby incorporates by reference paragraphs 1 through 17 as though fully set forth herein.

19. Labor Code section 1198 states:

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

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

20. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

21. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).

22. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11040 (11).

23. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

24. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

25. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy, and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods or Rest Periods.

26. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest Periods, based on staffing and coverage issues.

27. In addition, Defendants had notice of Plaintiff working outside of her scheduled and/or reported hours, as well as within Meal and Rest Periods, but failed to provide any compensation for this work-time.

28. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one

1 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
2 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 4 § (11),
3 (12). Prior to filing the instant complaint, Plaintiff's counsel requested the personnel file for
4 Plaintiff. Plaintiff's counsel received true and verified copies of Plaintiff's time records and
5 wage statements from Defendants. (See **Exhibits 2-5**). These records are replete with missing
6 Meal Periods. As an example, the SHC Time Card (produced and verified by SHC) show that
7 on February 28, 2023, Plaintiff clocked in for her shift at 8:00 a.m. and clocked out at 5:00
8 p.m. On this date, Plaintiff worked 8 hours without receiving a Meal Period. (**Exhibit 2**).
9 Further, SHC Wage Statements (produced and verified by SHC) shows no California Meal
10 Period Penalty awarded for this Pay Period. (**Exhibit 3**). Plaintiff did not waive her right to a
11 legal Meal Period.

12 29. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
13 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
14 Orders. Instead, these payments were made at an employee's base rate and did not include the
15 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
16 example, non-discretionary compensation and other employee benefits.

17 30. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
18 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
19 proven at trial.

20 31. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
21 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
22 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
23 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
24 Prayer For Relief.

25 32. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
26 pursuant to Labor Code sections 2699(a) for each of these employees.

27 33. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
28 section 2699(g)(1).

SECOND CAUSE OF ACTION
Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

34. Plaintiff hereby incorporates by reference paragraphs 1 through 33 as though fully set forth herein.
35. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal. App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendants would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. For example, on July 26, 2023 Plaintiff worked a shift lasting 8 hours and 22 minutes. **(Exhibit 4)**. On July 27, Plaintiff worked a shift lasting 9 hours and 12 minutes. *(Supra)*. On July 31, 2023 Plaintiff worked a shift lasting 8 hours and 4 minutes. *(Supra)*. For the Pay Period ending July 31, 2023 Plaintiff worked 1 hour and 38 minutes of Overtime. *(Supra)*. The SHC Wage Statement (produced and verified by SHC) for this pay period confirms that Plaintiff was not compensated for any overtime work. **(Exhibit 5)**. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. Moreover, Defendants instructed its employees to "self-round" their actual work-times, with a lack of specific instruction as to how to accurately - and neutrally - perform such a function.
36. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

1 37. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
2 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
3 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
4 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
5 Prayer For Relief.

6 38. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
7 pursuant to Labor Code sections 2699(a) for each of these employees.

8 39. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
9 section 2699(g)(1).

10 **THIRD CAUSE OF ACTION**
11 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
12 **Representative Action**
13 **(By Plaintiff against Defendants and DOES 1 through 10)**

14 40. Plaintiff hereby incorporates by reference paragraphs 1 through 39 as though fully set forth
15 herein.

16 41. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
17 including overtime compensation, due in violation of, among other statutes, Labor Code
18 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
19 whereby employees experienced monetary under-compensation. The systematic failure to
20 provide proper overtime compensation is a violation of California law.

21 42. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring
22 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
23 various forms of bonus and/or incentive pay, and the value of employee benefits and employee
24 discounts, in violation of Labor Code section 510.

25 43. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
26 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
27 proved at trial.

28 44. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,

1 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
2 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 45. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
5 pursuant to Labor Code sections 2699(a) for each of these employees.

6 46. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **FOURTH CAUSE OF ACTION**
9 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 47. Plaintiff hereby incorporates by reference paragraphs 1 through 46 as though fully set forth
13 herein.

14 48. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized
15 wage statements in violation of, among other statutes, Labor Code section 226. These
16 violations include, but are not limited to, Defendants' failure to accurately identify all
17 applicable regular and overtime (including double-time) rates of pay in violation of section
18 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
19 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate," in violation of
21 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
22 in violation of Labor Code section 226(a)(2). For example, Defendants had notice of
23 employees working outside of their scheduled and/or reported hours, as well as within Meal
24 and Rest Periods, but did not provide compensation.

25 49. Further, the Defendants' wage statement listings are confusing and employees cannot readily
26 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
27 example, Defendants are apparently using a time calculating system other than "minutes", but
28 without explanation to the employees within the wage statement.

50. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be

1 proven at trial.

2 51. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
3 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
4 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
5 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
6 Prayer For Relief.

7 52. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
8 pursuant to Labor Code sections 2699(a) for each of these employees.

9 53. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
10 section 2699(g)(1).

11 **FIFTH CAUSE OF ACTION**
12 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
13 **Representative Action**
14 **(By Plaintiff against Defendants and DOES 1 through 10)**

15 54. Plaintiff hereby incorporates by reference paragraphs 1 through 53 as though fully set forth
16 herein.

17 55. Defendants failed to reimburse their employees for all necessary business expenditures
18 incurred in direct consequence of the discharge of their duties in violation of, among other
19 statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants'
20 standard policies which require its employees to incur mileage and to use their own cell phones
21 for work-related purposes, without reimbursement.

22 56. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
23 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
24 proven at trial.

25 57. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
26 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
27 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
28 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
Prayer For Relief.

58. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

59. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

60. Plaintiff hereby incorporates by reference paragraphs 1 through 59 as though fully set forth herein.

61. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.

62. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

63. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

64. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

65. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

Dated: December 22, 2023

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel

Ryan T. Kuhn

Karoline D. Kitlowski

Attorneys for Plaintiffs ANA CORONA VIZCARRA
in a Representative capacity only, and on behalf of
other members of the general public similarly situated

Exhibit 1

SULLIVAN & YAECKEL

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October 19, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Ana Corona Vizcarra v. Sure Helpline Center
Our File No.: 7383

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Sure Helpline Center (hereinafter “SHC”), in the above referenced matter. This “written notice” is filed on behalf of Ms. Vizcarra, and all current and former non-exempt employees employed by SHC. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by SHC are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197.1 and 2802, as well as IWC Wage Order 4, codified as Title 8, California Code of Regulations, section 11040 *et seq.*, or any other applicable wage orders.

Facts and theories supporting the allegations: Ms. Vizcarra was employed as a non-exempt employee for SHC from approximately April 14, 2021 through September 22, 2023. Throughout the term of Ms. Vizcarra’s employment, SHC required Ms. Vizcarra and all other employees to experience actions illegal under the California Labor Code, including the following:

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Minimum Wage and Overtime Violations

- SHC failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 4, or any other applicable wage orders. This illegal action is due, in part, to SHC's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, SHC would instruct Ms. Vizcarra to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. On occasion, Ms. Vizcarra was required to commute from one office location to another, at times using her own vehicle. She was not compensated for this time. Additionally, SHC would often require Ms. Vizcarra to work extended hours (beyond scheduled hours), without compensation. Ms. Viscarra will testify she had to attend work related meetings off the clock.
- Additionally, among other issues, SHC has notice of Ms. Vizcarra, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Further, SHC failed to properly calculate and pay overtime at the actual overtime rate of pay, as SHC ignores certain compensation when calculating the Regular Rate of Pay. More specifically, SHC failed to properly calculate the legal Overtime Rate of Pay, by (among other issues) failing to consider certain non-discretionary forms of compensation (including, but not limited to bonuses, commissions, and/or other non-discretionary compensation).

Failure to Provide Compliant Meal Periods

- SHC failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, SHC does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day.
- SHC would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and customers at all times. SHC has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not

“cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.) Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, SHC failed to pay Meal Period Premiums at the proper rate, as SHC fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- SHC required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, SHC would interrupt, or cut short, its employees’ Meal Periods and require them to return to work. SHC was frequently understaffed, this would result in Ms. Vizcarra being required to respond to supervisors and customers about work related matters during her Meal Periods.
- SHC illegally retained control over its employees during Meal Periods. For example, SHC required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- SHC failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, SHC does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. SHC makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. SHC would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors and customers at all times. SHC has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which SHC would provide a Rest

Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- SHC required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, SHC would interrupt, or cut short, its employees’ Rest Periods and require them to return to work.
- Finally, SHC illegally retained control over its employees during Rest Periods. For example, SHC required its employees to “remain on the premises” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- SHC violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Vizcarra, and other employees were not compensated for all hours worked (due in part to SHC’s requirement that employees list only *scheduled* work-times, not actual work-times.)
- SHC violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, SHC (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which SHC would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- SHC violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. SHC does not explain how its system describes “time worked” on the Wage Statement itself. As such, Plaintiffs cannot “readily ascertain” what these figures mean. This is because SHC is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.75”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, SHC failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

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Failure to Provide Compliant Expense Reimbursement Payments

- SHC failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Vizcarra, and all other employees, including expenses for cell-phone costs and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

- SHC failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that SHC failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, SHC is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Karoline D. Kitlowski, Esq.

cc: *Via Certified U.S. Mail*

MARGARET SAUZA
Agent for Service of Process for
SURE HELPLINE CENTER
654 W. Main Street
El Centro, CA 92243

Exhibit 2

NAME Ana Cervera

NO. _____ DATE _____

	Extra or Lost Time	Regular Time
	M/S	Feb 16 8:00 Feb 16 1:00
	M/S	Feb 17 8:00 Feb 17 1:00
	M/S	Feb 21 Feb 22 Feb 23
CY	M/S	Feb 24 9:00
	M/S	FEB 24 12:00 Feb 25 9:00 Feb 26 12:00
	M/S	Feb 27 9am Feb 27 1pm
	M/S	Feb 28 8am
Peg. Hrs.	Rate	Amount
Extra Hrs.	Rate	Amount
Fed. Old Age Ben.		
Fed. Withholding Tax		
Social Security Tax		
Insurance		
Government Bonds		
Miscellaneous		
Total		
Net Wages		

TOTAL "OUT" REGISTRATIONS

TOTAL "IN" REGISTRATIONS

"OUT" minus "IN" = NET TIME

NOTE: REGISTRATIONS MUST BE 0.25 HR5, AND 10THS OR 100THS OF HR.

Exhibit 3

Sure Helpline Center
654 W. Main Street

Ana L Corona Vizcarra
101 Vernardo Dr SP 51
CALEXICO, CA 92231

Direct Deposit

Employee Pay Stub		Check number: 203479		Pay Period: 02/15/2023 - 02/28/2023		Pay Date: 03/03/2023				
Employee				SSN						
Ana L Corona Vizcarra, 101 Vernardo Dr SP 51, CALEXICO, CA 92231				***-**-1055						
Earnings and Hours		Qty	Rate	Current YTD Amount		Direct Deposit		Amount		
Regular Hourly		44:00	18.00	792.00	3,582.00	Checking - *****1810		633.29		
Hourly holiday					90.00					
		44:00		792.00	3,672.00					
Taxes				Current YTD Amount		Sick		Accrued	Used	Available
Medicare Employee Addl Tax				0.00	0.00	Current		1:23	0:00	25:32
Federal Withholding				-91.00	-321.00	YTD		21:00		
Social Security Employee				-49.10	-227.66					
Medicare Employee				-11.48	-53.24					
CA - Withholding				0.00	0.00					
CA - Disability Employee				-7.13	-33.05					
				-158.71	-634.95					
Net Pay				633.29	3,037.05	Memo				
						Direct Deposit				

Exhibit 4

NAME

Ana Corona

NO.

DATE

Extra or Lost Time

Regular Time

IN	AM	PM	REG. TIME
			JUL 26 AM 7:38
OUT			JUL 26 12:00
IN			JUL 26 1:00
OUT	PM		JUL 26 PM 5:00
IN	AM		JUL 27 AM 7:48
OUT			JUL 27 12:00
IN			JUL 27 1:00
OUT	PM		JUL 27 6:00
IN	AM		JUL 28 AM 7:52
OUT			JUL 28 AM 11:07
IN			JUL 28 PM 12:05
OUT	PM		JUL 28 3:00
IN	AM		JUL 31 AM 7:56
OUT			JUL 31 PM 12:00
IN			JUL 31 PM 1:00
OUT	PM		JUL 31 PM 5:00
IN	AM		
OUT			
IN			
OUT	PM		
IN	AM		
OUT			
IN			
OUT	PM		
IN	AM		
OUT			
IN			
OUT	PM		

TOTAL "OUT" REGISTRATIONS

TOTAL "IN" REGISTRATIONS

"OUT" minus "IN" = NET TIME

NOTE: REGISTRATIONS MUST BE 0.23 HRS. AND 10THS OR 100THS OF HR.

NAME

Ana Corona

NO.

DATE

Extra or Lost Time

Regular Time

IN	AM	PM	REG. TIME
			JUL 17 12:00
OUT			JUL 17 1:00
IN			JUL 17 5:00
OUT	PM		JUL 17 5:00
IN	AM		
OUT			JUL 18 5:00
IN			JUL 18 5:00
OUT	PM		JUL 18 5:00
IN	AM		JUL 19 5:00
OUT			JUL 19 12:00
IN			JUL 19 1:00
OUT	PM		JUL 19 5:00
IN	AM		
OUT			JUL 20 12:00
IN			JUL 20 1:00
OUT	PM		JUL 20 5:00
IN	AM		
OUT			JUL 21 5:00
IN			JUL 21 5:00
OUT	PM		JUL 21 5:00
IN	AM		JUL 24 5:00
OUT			JUL 24 5:00
IN			JUL 24 5:00
OUT	PM		JUL 24 5:00
IN	AM		JUL 25 12:00
OUT			JUL 25 1:00
IN			JUL 25 PM 5:00
OUT	PM		JUL 25 PM 5:00

TOTAL "OUT" REGISTRATIONS

TOTAL "IN" REGISTRATIONS

"OUT" minus "IN" = NET TIME

NOTE: REGISTRATIONS MUST BE 0.23 HRS. AND 10THS OR 100THS OF HR.

Exhibit 5

Sure Helpline Center
654 W. Main Street

Ana L Corona Vizcarra
101 Vernardo Dr SP 51
CALEXICO, CA 92231

Direct Deposit

Employee Pay Stub		Check number: 203597		Pay Period: 07/18/2023 - 07/31/2023		Pay Date: 08/03/2023				
Employee				SSN						
Ana L Corona Vizcarra, 101 Vernardo Dr SP 51, CALEXICO, CA 92231				***-**-1055						
Earnings and Hours		Qty	Rate	Current YTD Amount		Direct Deposit		Amount		
Regular Hourly		76:00	18.00	1,368.00	13,599.00	Checking - *****1810		1,201.67		
Hourly holiday		8:00	18.00	144.00	738.00					
		84:00		1,512.00	14,337.00					
Taxes				Current YTD Amount		Sick		Accrued	Used	Available
Medicare Employee Addl Tax				0.00	0.00	Current		3:52	0:00	36:33
Federal Withholding				-177.00	-1,601.00	YTD		29:02		
Social Security Employee				-93.74	-888.89					
Medicare Employee				-21.93	-207.89					
CA - Withholding				-4.06	-4.06					
CA - Disability Employee				-13.60	-129.03					
				-310.33	-2,830.87					
Adjustments to Net Pay				Current YTD Amount						
Employee Advance					-400.00					
Net Pay				1,201.67	11,106.13					