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6 Attorneys for Plaintiffs (Additional Counsel identified on next page)

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 37-2023-00045031-CU-06-CTL

9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10 ZENNIA N. HERNANDEZ and)
11 MONIQUE MENOCAL, individually)
12 and as an aggrieved employees pursuant)
13 to the Private Attorneys General Act)
14 (PAGA) on behalf of the State of)
15 California and other aggrieved)
16 employees,)

17 Plaintiffs,)

18 vs.)

19 EAST COUNTY RESPITE-HOME)
20 CARE INC., a California corporation;)
21 MARGARET GOLDMAN, an)
22 individual; and DOES 1 through 50,)

23 Defendants.)

Case No.:

**INDIVIDUAL, CLASS, AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to pay minimum/regular wages;
2. Failure to Pay State Overtime;
3. Failure to Comply with Meal Break Laws;
4. Failure to Comply with Rest Break Laws;
5. Failure to Reimburse Expenses;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Pay Wages Timely;
8. Failure to Provide and Maintain Records;
9. Violation of B.&P. Code §§ 17200, *et seq.*;
10. Sick Pay Violations; and
11. Violations of Various Miscellaneous Provisions of the Labor Code via the PAGA.

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8 Plaintiff MICHELLE HERNANDEZ and MONIQUE MENOCAL on behalf of
9 themselves, the State of California, and acting for the interests of other current and
10 former employees (“Aggrieved Employees”), the putative class, and similarly situated
11 individuals (cumulatively “Plaintiffs”), allege the following:

12 **NATURE OF THE ACTION**

- 13 1. This is a wage and hour individual, class, and representative action.
- 14 2. Pursuant to Code of Civil Procedure § 382 and the Private Attorney
15 General Act (PAGA), §§ 2698, 2699 of the California Labor Code, Plaintiffs bring this
16 proposed class and representative action against Defendants for workplace abuse in
17 violation of the California Labor Code and the Industrial Welfare Commission Wage
18 Orders (the “IWC Wage Orders”), all of which contribute to Defendants’ deliberate
19 unfair competition in California.
- 20 3. Plaintiffs seek all remedies available to them including but not limited to
21 reimbursements, penalties, restitution, injunctive and other equitable relief, reasonable
22 attorneys’ fees, and costs.

23 **JURISDICTION AND VENUE**

- 24 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter
25 jurisdiction is proper in the Superior Court of California, County of San Diego, State
26 of California because Plaintiffs allege claims arising under California law.
- 27 5. This Court has jurisdiction over the Defendants because each is an
28 association, corporation, business entity, or individual that conducts substantial
business in the State of California.

6. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of San Diego because Defendant is doing business in the County of San Diego, California and this is where the misconduct occurred to the named Plaintiff.

THE PARTIES

7. Plaintiff ZENNIA N. HERNANDEZ is an individual residing in the County of San Diego, California.

8. Plaintiff MONIQUE MENOCAL is an individual residing in the County of San Diego, California.

9. Defendant EAST COUNTY RESPITE-HOME CARE INC. is a California corporation doing business in the State of California.

10. Defendant MARGARET GOLDMAN is and was Defendant EAST COUNTY RESPITE-HOME CARE INC.'s corporate officer/managing agent and, as such, this Defendant is believed to be an "other person acting on behalf of an employer" within the meaning of Labor Code §§ 558 and 558.1.

11. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs for the events and actions alleged herein.

12. Unless otherwise specified by name, the named Defendants and DOES 1 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or "Defendants."

13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter

1 ego for each of the other Defendants and each were co-conspirators with respect to the
2 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
3 the other pursuant to the conspiracy and in proximate connection with the other
4 Defendant(s).

5 14. Plaintiffs are informed and believe, and based thereon allege, that each
6 Defendant was acting partly within and partly without the scope and course of their
7 employment, and was acting with the knowledge, permission, consent, and ratification
8 of every other Defendant.

9 15. Plaintiffs are informed and believe, and based thereon allege that each of
10 the Defendants was an agent, managing general partner, managing member, owner, co-
11 owner, partner, employee, and/or representative of each of the Defendants and was at
12 all times material hereto, acting within the purpose and scope of such agency,
13 employment, contract and/or representation, and that each of them is jointly and
14 severally liable to Plaintiffs.

15 16. Plaintiffs are informed and believe, and based thereon allege that each of
16 the Defendants is liable to Plaintiffs under legal theories and doctrines including but
17 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
18 ego, based in part, on the facts set forth below.

19 17. Plaintiffs are informed and believe, and based thereon allege, that each
20 of the named Defendants are part of an integrated enterprise and have acted or
21 currently act as the employer and/or joint employer of the Plaintiffs/Class Members
22 making each of them liable for the wage and hour violations alleged herein.

23 18. Plaintiffs are informed and believe, and therefore allege, that one, more
24 than one, or each of the named Defendants are liable to the Plaintiffs under legal
25 theories and doctrines including but not limited to (1) the common law joint employer
26 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
27 Defendants worked as the central hub to an overall business operation by which the
28 interrelationship between these Defendants makes each of the Defendants liable for

1 the wage and hour violations alleged herein.

2 **GENERAL ALLEGATIONS**

3 19. Defendants are in the homecare business.

4 20. On or about November 9, 2018, Defendants hired and employed Plaintiff
5 HERNANDEZ as a respite worker whose job was to travel to patients' homes to
6 provide respite services.

7 21. On or about May 15, 2023, Defendants involuntarily terminated Plaintiff
8 HERNANDEZ's employment with Defendants and Defendants did not provide her
9 final paycheck until May 22, 2023, in violation of Labor Code § 203, and Defendants
10 failed to pay her all wages to which she had a right to receive in an amount to be
11 proven at trial.

12 22. On or about February 20, 2023, Defendants employed Plaintiff
13 MENOCAL as an office worker whose job was to perform administrative services.

14 23. On or about June 15, 2023, Defendants involuntarily terminated Plaintiff
15 MENOCAL's employment and Defendants did not provide her final paycheck until
16 June 20, 2023, in violation of Labor Code § 203, and Defendants failed to pay her all
17 wages to which she had a right to receive in an amount to be proven at trial.

18 24. The named Plaintiffs are "aggrieved employees" within the meaning of
19 the PAGA because Defendants employed Plaintiffs in California and Plaintiffs
20 experienced one or more of the alleged Labor Code violations committed against the
21 Plaintiffs, and therefore the named Plaintiffs are properly suited to act on behalf the
22 state, and collect civil penalties for all violations committed against the Represented
23 Employees, who are also aggrieved employees as defined by Labor Code § 2699(c).

24 25. California law provides that an aggrieved employee may file a
25 representative action under the PAGA against an employer for civil penalties in
26 connection with violations of the Labor Code and Wage Order.

27 26. On information and belief, current and former employees of Defendants
28 suffered from Defendants' Labor Code violations.

1 **Minimum Wage/Regular Wage claims.**

2 27. During all times relevant, Plaintiffs are informed and believe and thereon
3 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
4 EMPLOYER paid Aggrieved Employees wages at less than the rate required under
5 state, federal, and local law.

6 28. Defendants, for example, had an arrangement with a third party (the San
7 Diego Regional Center) wherein the third party agreed to pay Defendants to send their
8 employees to work specific assignments for a predetermined number of hours for
9 various residential patients in the County of San Diego area.

10 29. Because of Defendants' scheduling mistakes and at no fault of the
11 Aggrieved Employees, however, Aggrieved Employees worked more hours than what
12 the foregoing third party agreed to pay the Defendants.

13 30. In job assignments where Aggrieved Employees performed more work
14 than what the Defendants' contract with third parties allowed, Defendants refused to
15 pay Aggrieved Employees for the excess hours and/or manipulated employees'
16 timesheets and payroll documents to falsely indicate that fewer hours had been worked.

17 31. As a result of the foregoing, Defendants refused to pay Aggrieved
18 Employees for the above-described hours at their regular rate or minimum wage rate in
19 an amount to be determined at trial.

20 32. This claim is also premised on Plaintiffs' right to pursue all Labor Code
21 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
22 *Inc.* (2018) 23 Cal.App.5th 745.

23 **Failure to Pay State Overtime.**

24 33. During all times relevant, Plaintiffs are informed and believe and thereon
25 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
26 EMPLOYER failed to pay Aggrieved Employees state overtime compensation and/or
27 the correct amount of overtime compensation.

28 34. This claim is generally premised on the facts described above, but when

1 Aggrieved Employees also had the right to overtime compensation, Defendants failed
2 to pay Aggrieved Employees overtime in an amount to be proven at trial.

3 35. This claim is also premised on Plaintiffs' right to pursue all Labor Code
4 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
5 *Inc.* (2018) 23 Cal.App.5th 745.

6 **Meal and Rest Break Claims.**

7 36. During all times relevant, Plaintiffs are informed and believe and thereon
8 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
9 EMPLOYER failed to authorize and/or permit Aggrieved Employees to take all their
10 compliant off-duty meal and rest breaks during the required timeframe as required by
11 law and failed to pay them premium pay, in an amount to be proven at trial.

12 37. Plaintiffs are informed and believe and thereon allege that when
13 Aggrieved Employees worked more than five and/or ten hours in a workday, they were
14 deprived their right to take lawful meal breaks and Defendants failed to pay them
15 premium pay for the missed or noncompliant meal breaks, in an amount to be proven
16 at trial.

17 38. Because of Defendants' policy and practice, Defendants prevented
18 Aggrieved Employees from taking all their uninterrupted rest breaks to which they had
19 the right to enjoy, in an amount to be proven at trial, and Defendants failed to pay them
20 premium pay as required under California law. (*See Augustus v. ABM Security Services*
21 *(2016) 2 Cal.5th 257.*)

22 39. As to Plaintiff MENOCAL, for example, her records indicate that on
23 April 24, 2023, May 17, 2023, and May 26, 2023 she worked six hours, yet Defendants
24 did not provide her a lawful meal break.

25 40. Similarly, on March 22, 2023, March 24, 2023, and May 12, 2023,
26 Plaintiff MENOCAL's records indicate she worked six and a half hours, but
27 Defendants did not provide her a lawful meal break.

28 41. The above are a few examples of many where time records indicating

1 Defendants did not provide Plaintiff MENOCAL and presumably other Aggrieved
2 Employees lawful meal breaks, and Plaintiffs are informed and believe and thereon
3 allege there are other Aggrieved Employees whose meal and rest break rights were
4 violated, as well.

5 42. This claim is also premised on Plaintiffs' right to pursue all Labor Code
6 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
7 *Inc.* (2018) 23 Cal.App.5th 745.

8 **Failure to Reimburse.**

9 43. During all times relevant, and pursuant to company policy and/or practice
10 and/or direction, Defendants required Plaintiff HERNANDEZ and other Aggrieved
11 Employees to incur various work-related expenses which were never reimbursed.

12 44. Defendants required many Aggrieved Employees to work remotely,
13 normally at patients' homes, and to use cell phones to communicate with Defendants'
14 managers.

15 45. Plaintiffs are informed and believe and thereon allege the unreimbursed
16 purchases Plaintiff HERNANDEZ and Aggrieved Employees were required to make
17 to perform their work include, but are not limited to cell phone, cell phone data, and
18 unpaid or underpaid mileage reimbursement.

19 46. Defendants passed the cost of doing business onto its employees by
20 requiring, without reimbursement, Aggrieved Employees to purchase equipment, tools,
21 and services necessary to perform work for Defendants. *See Aguilar v. Zep, Inc.*, 2014
22 US Dist. LEXIS 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where
23 outside sales reps used home internet and computers for work, and even admitted that
24 they would have incurred the same expenses without work duties, the court
25 nevertheless held that the employer was obligated to reimburse some reasonable
26 portion of these expenses); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at
27 *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office
28 claims processors with 2802 phone reimbursement claims for landline reimbursements

1 where company required claims processors working from home to have a landline, but
2 rejecting certification of claims for home office supplies as individualized); *Cochran v.*
3 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014) (“We hold that when
4 employees must use their personal cell phones for work-related calls, Labor Code
5 section 2802 requires the employer to reimburse them. Whether the employees have
6 cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is
7 a reasonable percentage of their cell phone bills.”)

8 47. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor
9 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
10 *USA, Inc.* (2018) 23 Cal.App.5th 745.

11 **Erroneous Wage Statements in Violation of Labor Code § 226.**

12 48. During all times relevant, and pursuant to company policy and/or practice
13 and/or direction and continuing to the present, and pursuant to company policy and/or
14 practice and/or direction, Defendants issued confusing and inaccurate wage and
15 earning statements to Aggrieved Employees in violation of Labor Code § 226.

16 49. Plaintiffs allege Aggrieved Employees’ paystubs were inaccurate because
17 Defendants manipulated their time records and/or failed to pay them all wages, as
18 alleged above, supporting a derivative claim under Labor Code § 226.

19 50. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor
20 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
21 *USA, Inc.* (2018) 23 Cal.App.5th 745.

22 **Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, etc.**

23 51. During all times relevant and pursuant to the above-mentioned policies,
24 DEFENDANT EMPLOYER failed to pay all wages to which Aggrieved Employees
25 had the right to receive under the law in a timely manner.

26 52. As to the named Plaintiffs specifically, as alleged above Defendants failed
27 to timely pay Plaintiffs wages in violation of the Labor Code including but not limited
28 to §§ 201-203, and 204.

53. Derivative claims are also premised on Plaintiffs’ right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

REPRESENTATIVE ACTION (PAGA) CLAIMS

54. This is a wage and hour representative action filed pursuant to the PAGA, Labor Code §§ 2698, 2699 generally consists of the following group:

**All persons Defendants employed in the State of California
from October 16, 2022 to the present.**

55. All members of the Aggrieved groups will be referred to as the “Aggrieved Employees.”

56. The “PAGA Period” means from **October 16, 2022** to the present, the timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

57. California law provides that an employee may file an action against an employer to recover penalties for violations of the Labor Code and Wage Orders provided the aggrieved employee files an action on behalf of him/her or herself/himself and similarly-situated current and former employees.

58. At all material times, DEFENDANT EMPLOYER and DOES 1 through 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

59. As set forth in further detail below, because of the analysis and investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent correspondence to the California Labor and Workforce Development Agency (LWDA) and to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims and their intent to pursue litigation.

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 60. As to penalty claims under the Labor Code Private Attorney General
3 Act, on or about **October 16, 2023**, Plaintiffs began to exhaust his/her administrative
4 remedies by sending correspondence to the LWDA and via certified mail to
5 DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in
6 this Complaint.

7 61. By the time the statutory period for Plaintiffs expires from the first letter
8 alleged above, the LWDA likely will not have served Plaintiffs with notice of intent
9 to assume jurisdiction over the applicable penalty claims and did not provide notice as
10 set forth in Labor Code § 2699.3(a)(2)(A) within the statutory period, but more to
11 follow as time expires before this Complaint is amended to report the actual facts.

12 62. Therefore, once the statutory waiting period expires based on the
13 presumed facts above, Plaintiffs will have exhausted all applicable administrative
14 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
15 Complaint.

16 **CLASS ACTION ALLEGATIONS**

17 63. Plaintiffs bring this action on behalf of herself and all others similarly
18 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

19 64. Plaintiffs seek to represent the classes and/or subclasses composed of
20 and defined as follows:

21 **All of Defendants' current or former nonexempt employees**
22 **who worked in the state of California from October 16,**
23 **2019 to the present.**

24 65. Plaintiffs also seek to represent the following subclasses composed of
25 and defined as follows:

26 **Unpaid Minimum/Regular Wage Subclass:** All members of the
27 Plaintiff Class who worked less than eight hours a day or less than
28 40 hours in a workweek for Defendants in California as an hourly-

1 paid non-exempt employee during the applicable statute of
2 limitations period.

3 **Unpaid Overtime Wage Subclass:** All members of the Plaintiff
4 Class who worked overtime as a non-exempt employee during the
applicable statute of limitations period.

5 **Wage Statement Subclass:** All members of the Plaintiff Class
6 who worked for Defendants in California as an hourly-paid non-
7 exempt employee and did not receive accurate itemized wage
8 statements as required by Labor Code § 226 during the applicable
statute of limitations period.

9 **Meal and Rest Break Subclass:** All members of the Plaintiff
10 Class who, during the applicable statute of limitations period
11 worked for Defendants in California as an hourly-paid non-exempt
12 employee and were not provided compliant meal and/or rest breaks
13 and were not provided one hour of pay at their regular rate of
compensation in lieu thereof during the applicable statute of
limitations period.

14 **Waiting Time Penalty Subclass:** All members of the Plaintiff
15 Class whose employment was terminated during the applicable
16 statute of limitations period and did not receive all wages in a
timely manner as required by Labor Code §§ 201-203.

17 **Unreimbursed Expense Subclass:** All members of the Plaintiff
18 Class who, during the relevant period, Defendants did not
19 reimburse for reasonable and necessary expenses.

20 66. The above-mentioned class-members will collectively be referred to as
21 “Class Members.”

22 67. Plaintiffs reserve the right under the California Rules of Court, to
23 amend or modify the class description with greater specificity or further division into
24 subclasses or limitation to particular issues.

25 68. This action is 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
27 well-defined community of interest in the litigation and the proposed Class is easily
28 ascertainable.

1 **A. Numerosity.**

2 69. The potential members of the Class as defined are so numerous or many,
3 that joinder of all the members of the Class is impracticable.

4 70. While the precise number of Class Members has not been determined at
5 this time, Plaintiffs are informed and believe, and based thereon allege, that
6 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
7 employed, a sufficient number of employees to warrant class certification if all other
8 elements are met.

9 71. Accounting for employee turnover during the relevant periods necessarily
10 increases the number of potential members of the Class.

11 **B. Commonality.**

12 72. There are questions of law and fact common to the Class that predominate
13 over any questions affecting only individual Class Members.

14 73. Common questions of law and fact include, without limitation and subject
15 to possible further amendment, the following:

- 16 a. Whether Defendants failed to pay minimum/regular
17 wages;
- 18 b. Whether Defendants' policy or practice of not paying
19 Plaintiffs and other similarly situated employees' the
20 lawful sum of overtime compensation is illegal under
21 Labor Code §§ 510, 1194, and the applicable Wage
22 Order(s);
- 23 c. Whether Defendants' policy or practice of not paying
24 Plaintiffs and other similarly situated employees all their
25 wages due in their final paychecks immediately upon
26 involuntary termination or when its employees provided
27 72 hours' notice before voluntary resignation, is unlawful
28 under Labor Code §§ 201, 202 and/or 203;

- 1 d. Whether Defendants violated Labor Code § 2802 by
2 failing to reimburse the Class for business expenses;
3 e. Whether Defendants violated Labor Code § 226 by not
4 providing accurate paystubs to the Class;
5 f. Whether Defendants violated the meal and rest break
6 laws in California; and
7 g. Whether the Class May recover restitution pursuant to
8 Business & Professions Code §§ 17200, *et seq.*

9 **C. Typicality.**

10 74. The named Plaintiff's claims are typical of the claims of the Class
11 because the named Plaintiff and all members of the Class sustained injuries and
12 damages arising out of and caused by Defendants' common course of conduct and
13 policies in violation of laws, regulations that have the force and effect of law and
14 statutes as alleged herein.

15 **D. Adequacy of Representation.**

16 75. The named Plaintiff is a member of the Class, does not have any
17 conflicts of interest with other Class Members, and will prosecute the case vigorously
18 on behalf of the Class.

19 76. Counsel representing the named Plaintiff and the putative Class are
20 competent and experienced in litigating employment class actions.

21 77. The named Plaintiff will fairly and adequately represent and protect the
22 interests of the Class Members.

23 **E. Superiority of Class Action.**

24 78. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy because individual joinder of all Class Members is not
26 practicable, and questions of law and fact common to the Class predominate over any
27 questions affecting only individual members of the Class.

28 79. Each Class Member was damaged or suffered injury and may recover by

1 reasons of Defendants' illegal policies and/or practices.

2 80. Class Action treatment will allow those similarly situated persons to
3 litigate their claims in the manner that is most efficient and economical for the parties
4 and the judicial system.

5 81. Plaintiffs are unaware of any difficulties that are likely to be encountered
6 in the management of this action that would preclude maintenance as a Class Action.

7 82. For the reasons alleged in this Complaint, this action should be certified as
8 a Class Action.

9 **FIRST CAUSE OF ACTION**

10 **Plaintiffs' Individual, Class, and**
11 **Representative Claim under the PAGA for Failure**
12 **to Pay State and Local Minimum/Regular Wages in**
13 **Violation of California Labor Code §§ 216, 218, 218.5,**
14 **223, 1182.12, 1194, 1194.2, 1197, 1198, and the**
15 **applicable Industrial Welfare Commission ("IWC") Wage Order**
16 **(Against all Defendants)**

17 83. Plaintiffs re-allege and incorporate by reference the foregoing
18 allegations as though set forth herein.

19 84. Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1182.12, 1194, 1194.2, and
20 1197 it is unlawful for a California employer to suffer or permit an employee to work
21 without paying wages for all hours worked, as required by the applicable IWC Wage
22 Order.

23 85. During all times relevant, the applicable IWC Wage Order, including but
24 not limited to Wage Order 4 and/or 5, applied to Aggrieved Employees' employment
25 with Defendants.

26 86. Pursuant to the applicable IWC Wage Order, "hours worked" include the
27 time during which an employee is "suffered or permitted to work, whether or not
28 required to do so."

1 87. Every employer must pay each employee minimum wage as required
2 under state law and, where applicable and if higher, local law.

3 88. During all times relevant, Plaintiffs are informed and believe, and based
4 thereupon allege that Aggrieved Employees were not paid minimum/regular wages for
5 all hours suffered or permitted to work in violation of state and, where applicable, local
6 law and/or their agreement with DEFENDANT EMPLOYER.

7 89. At all material times, DEFENDANT EMPLOYER and DOES 1 through
8 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
9 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
10 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
11 Labor Code or any provision regulating hours and days of work in any Order of the
12 Industrial Welfare Commission and, as such, are subject to penalties for each
13 underpaid employee as set for in Labor Code § 558.

14 90. In committing the violations of state law as herein alleged, Plaintiffs are
15 informed and believe based there upon allege that Defendants have knowingly and
16 willfully refused to perform their obligations to compensate Aggrieved Employees for
17 all wages earned and all hours worked.

18 91. As a direct result, Aggrieved Employees have suffered and continue to
19 suffer, substantial losses related to the use and enjoyment of such compensation,
20 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
21 compel Defendants to fully perform their obligations under state law, all to their
22 respective damage in amounts according to proof at trial and within the jurisdictional
23 limitations of this Court.

24 92. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
25 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
26 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation in which DEFENDANT EMPLOYER
28 violated the minimum wage and/or regular wage provisions of the Labor Code,

1 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
2 the exact amount of the applicable penalty is all in an amount to be shown according to
3 proof at trial.

4 93. Pursuant to the PAGA, Plaintiffs seek to recover from Defendants, and
5 each of them, penalties, attorneys' fees, and costs incurred herein.

6 94. Plaintiffs on behalf of themselves and the putative Class request the
7 recovery of the unpaid minimum wages, all penalties to which they may recover,
8 liquidated damages, interest, attorneys' fees, and costs in an amount to be determined
9 at trial.

10 **SECOND CAUSE OF ACTION**

11 **Plaintiffs' Individual, Class, and Representative Claim under the PAGA for** 12 **Failure to Pay State Overtime and/or Double-Time** 13 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198,** 14 **and the Applicable Wage Order** 15 **(Against all Defendants)**

16 95. Plaintiffs re-allege and incorporate by reference the foregoing
17 allegations as though set forth herein.

18 96. This claim is premised on Plaintiffs' right to pursue all Labor Code
19 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
20 *USA, Inc.* (2018) 23 Cal.App.5th 745.

21 97. During all times relevant, the applicable Wage Order, including but not
22 limited to Wage Order 4 and/or 5, applied to Plaintiffs' employment with Defendants.

23 98. Pursuant to the applicable Wage Order, "hours worked" include the
24 time during which an employee is "suffered or permitted to work, whether or not
25 required to do so."

26 99. For each hour (or fraction thereof) an employee works over forty (40)
27 hours in a week or more than eight (8) hours in a workday the employer must pay the
28 rate of one and a half times the employee's regular hourly wage.

1 100. For each hour (or fraction thereof) an employee works more than twelve
2 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
3 day of work, the employee must be compensated at the rate of no less than twice the
4 regular rate of pay for that employee.

5 101. According to § 49.1.1 of the California Division of Labor Standards and
6 Enforcement Policies and Interpretations Manual, “In California, as with the federal
7 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
8 includes many different kinds of remuneration, for example: hourly earnings, salary,
9 piecework earnings, *commissions*, *certain bonuses*, and the value of meals and
10 lodging.” (Emphasis added.)

11 102. Plaintiffs are informed and believe, and thereon allege that
12 DEFENDANT EMPLOYER failed to pay all overtime compensation to the Aggrieved
13 Employees.

14 103. At all material times, DEFENDANT EMPLOYER and DOES 1 through
15 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
16 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
17 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
18 Labor Code or any provision regulating hours and days of work in any Order of the
19 Industrial Welfare Commission and, as such, are subject to penalties for each
20 underpaid employee as set for in Labor Code § 558.

21 104. In committing the violations of state law as herein alleged, Defendants
22 have knowingly and willfully refused to perform their obligations to compensate
23 Aggrieved Employees for all wages earned and all hours worked.

24 105. As a direct result, Aggrieved Employees have suffered and continue to
25 suffer, substantial losses related to the use and enjoyment of such compensation,
26 wages, lost interest on such monies and expenses and attorney’s fees in seeking to
27 compel Defendants to full perform their obligation under state law, all to their
28 respective damage in amounts according to proof at trial and within the jurisdictional

1 limitations of this Court.

2 106. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
3 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
4 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
5 pay period for each subsequent violation in which DEFENDANT EMPLOYER
6 violated the overtime provisions of the Labor Code, including but not limited to §§ 510
7 at 1194, the exact amount of the penalties sought is in an amount to be shown
8 according to proof at trial.

9 107. Pursuant to the PAGA, Plaintiffs seek to recover from Defendants, and
10 each of them, penalties, attorneys' fees, and costs incurred herein.

11 108. Plaintiffs on behalf of themselves and the putative Class request the
12 recovery of the unpaid minimum wages, all penalties to which they may recover,
13 liquidated damages, interest, attorneys' fees, and costs in an amount to be determined
14 at trial.

15 **THIRD CAUSE OF ACTION**

16 **Plaintiffs' Individual, Class, and Representative Claim under the PAGA for**
17 **Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,**
18 **512, 1198, and the applicable IWC Wage Order**

19 (Against all Defendants)

20 109. Plaintiffs re-allege and incorporate by reference the foregoing allegations
21 as though set forth herein.

22 110. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
23 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
24 (2018) 23 Cal.App.5th 745.

25 111. Plaintiffs are informed and believe, and based thereon allege, that by
26 failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five
27 hours or more, which began before the end of the fifth hour of work, and failing to pay
28 such employees premium wages of one (1) hour of pay at their regular rate of

1 compensation for each workday the meal period was not provided, Defendants
2 willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage
3 Order.

4 112. Based on the misconduct alleged in this Complaint, Plaintiffs are
5 informed and believe, and based thereon allege, that Defendants failed to pay all
6 premium wages owed.

7 113. At all material times, DEFENDANT EMPLOYER and DOES 1 through
8 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
9 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
10 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
11 Labor Code or any provision regulating hours and days of work in any Order of the
12 Industrial Welfare Commission and, as such, are subject to penalties for each
13 underpaid employee as set for in Labor Code § 558.

14 114. In committing the violations of state law as herein alleged, Plaintiffs are
15 informed and believe and based thereon allege that Defendants have knowingly and
16 willfully refused to perform their obligations to compensate Aggrieved Employees for
17 all wages earned and all hours worked.

18 115. As a direct result, Aggrieved Employees have suffered and continue to
19 suffer, substantial losses related to the use and enjoyment of such compensation,
20 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
21 compel Defendants to fully perform their obligations under state law, all to their
22 respective damage in amounts according to proof at trial and within the jurisdictional
23 limitations of this Court.

24 116. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
25 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
26 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation in which all culpable Defendants violated Cal.
28 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to

1 be shown according to proof at trial.

2 117. Wherefore, Plaintiffs request all remedies available to them pursuant to
3 the PAGA.

4 118. Plaintiffs on behalf of themselves and the putative Class request the
5 recovery of the unpaid minimum wages, all penalties to which they may recover,
6 liquidated damages, interest, attorneys' fees, and costs in an amount to be determined
7 at trial.

8 **FOURTH CAUSE OF ACTION**

9 **Plaintiffs' Individual, Class, and Representative Claim under the PAGA for**
10 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,**
11 **512, 1198, and the applicable IWC Wage Order**

12 (Against all Defendants)

13 119. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 120. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
16 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
17 (2018) 23 Cal.App.5th 745.

18 121. Plaintiffs are informed and believe, and based thereon allege, that based
19 on the misconduct alleged in this Complaint, Defendants failed to authorize and permit
20 Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when
21 paid commissions or otherwise to provide paid ten-minute rest periods for every four
22 (4) hours or major fraction thereof worked per day, and by failing to provide premium
23 wages at the regular rate of pay when these periods were not permitted or authorized,
24 Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable
25 IWC Wage Order.

26 122. Plaintiffs are informed and believe, and based thereon allege that based on
27 the misconduct alleged in this Complaint, Defendants failed to pay premium pay for
28 Plaintiffs' missed meal breaks DEFENDANT EMPLOYER failed to provide or

1 authorize.

2 123. At all material times, DEFENDANT EMPLOYER and DOES 1 through
3 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
4 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
5 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
6 Labor Code or any provision regulating hours and days of work in any Order of the
7 Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set for in Labor Code § 558.

9 124. In committing the violations of state law as herein alleged, Plaintiffs are
10 informed and believe and based thereon allege that Defendants have knowingly and
11 willfully refused to perform their obligations to compensate Aggrieved Employees for
12 all wages earned and all hours worked.

13 125. As a direct result, Aggrieved Employees have suffered and continue to
14 suffer, substantial losses related to the use and enjoyment of such compensation,
15 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
16 compel Defendants to fully perform their obligations under state law, all to their
17 respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court.

19 126. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
20 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
21 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
22 pay period for each subsequent violation in which all culpable Defendants violated Cal.
23 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
24 be shown according to proof at trial.

25 127. Wherefore, Plaintiffs request all remedies available to them pursuant to
26 the PAGA.

27 128. Plaintiffs on behalf of themselves and the putative Class request the
28 recovery of the unpaid minimum wages, all penalties to which they may recover,

1 liquidated damages, interest, attorneys' fees, and costs in an amount to be determined
2 at trial.

3 **FIFTH CAUSE OF ACTION**

4 **Individual, Class, and Representative Claim under the PAGA for**
5 **Failure to Indemnify/Reimburse Business Expenses in Violation of**
6 **California Labor Code § 1198, 2802, and the applicable Wage Order**

7 (Against all Defendants)

8 129. Plaintiffs re-allege and incorporate by reference the foregoing allegations
9 as though set forth herein.

10 130. California Labor Code § 2802 requires employers to indemnify their
11 employees for expenses and losses incurred while discharging their duties or
12 obedience to the directions of their employer.

13 131. California Labor Code § 2804 mandates that this statutory right cannot be
14 waived.

15 132. The Plaintiffs incurred losses in obedience to the directions of
16 Defendants in the form of purchase of work-related expenses described in this
17 Complaint.

18 133. As a direct result of Defendants' violation of California Labor Code §
19 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial
20 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest
21 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

22 134. Defendants derive an unjust and inequitable economic benefit in failing
23 to comply with the law regarding indemnification and reimbursement of employees.

24 135. Further, Plaintiffs request all remedies available to them pursuant to the
25 PAGA.

26 136. Plaintiffs on behalf of themselves and the putative Class request the
27 recovery of the unreimbursed work-related expenses, all penalties to which they may
28 recover, liquidated damages, interest, attorneys' fees, and costs in an amount to be

1 determined at trial.

2 **SIXTH CAUSE OF ACTION**

3 **Individual, Class, and Representative Claim under the PAGA for**

4 **Violations of California Labor Code §§ 226 and 1198**

5 (Against all Defendants)

6 137. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 138. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
9 pertinent part, that every employer shall, “semimonthly or at the time of each
10 payment of wages, shall furnish to his or her employees, either as a detachable part of
11 the check, draft, or voucher paying the employee's wages, or separately if wages are
12 paid by personal check or cash, an accurate itemized statement in writing showing (1)
13 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a
15 piece-rate basis, (4) all deductions, provided that all deductions made on written
16 orders of the employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security
19 number..., (8) the name and address of the legal entity that is the employer. . . , and
20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee and, beginning July 1,
22 2013, if the employer is a temporary services employer as defined in Section 201.3,
23 the rate of pay and the total hours worked for each temporary services assignment. . .”
24 (Labor Code § 226 subdivision (a).)

25 139. Likewise, California Labor Code § 226, subdivisions (b) and (c), require
26 employers doing business in the State of California to provide current and former
27 employees access to their payroll records.

28 140. Upon information and belief, during all times relevant to this action,

1 Defendants did not provide accurate wage statements throughout the Class Period.

2 141. Plaintiffs allege that on numerous occasions, an exact amount by which
3 will be proven at trial, Defendants violated various provisions of § 226, including but
4 not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and (a)(9) by
5 failing to provide Plaintiffs accurate itemized statement in writing accurately showing
6 gross wages earned, total hours worked by the employee, net wages earned, among
7 other things.

8 142. At all material times DEFENDANT EMPLOYER and DOES 1 through
9 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
10 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
11 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
12 Labor Code or any provision regulating business hours and days of work in any Order
13 of the Industrial Welfare Commission and, as such, are subject to penalties for each
14 underpaid employee as set forth in Labor Code § 558.

15 143. In committing the violations of state law as herein alleged, Defendants
16 have knowingly and willfully refused to perform their obligations to compensate
17 Aggrieved Employees for all wages earned and all hours worked.

18 144. As a direct result, Aggrieved Employees have suffered and continue to
19 suffer, substantial losses related to the use and enjoyment of such compensation,
20 wages, lost interest on such monies and expenses and attorney's fees in seeking to
21 compel Defendants to fully perform their obligations under state law, all to their
22 respective damage in amounts according to proof at trial and within the jurisdictional
23 limitations of this Court.

24 145. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
25 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
26 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation in which DEFENDANT EMPLOYER
28 violated Labor Code § 226, the exact amount of the applicable penalty is all in an

1 amount to be shown according to proof at trial.

2 146. Further, Plaintiffs request all remedies available to them pursuant to the
3 PAGA.

4 147. Plaintiffs on behalf of themselves and the putative Class request the
5 recovery of the damages, penalties, costs, and attorneys' fees available to them
6 pursuant to the Labor Code including but not limited to §§ 226, 226.3, 226.6.

7 **SEVENTH CAUSE OF ACTION**

8 **Plaintiffs' Individual, Class, and Representative Claim under the PAGA for**
9 **Failure to Pay Timely Earned Wages during Employment and**
10 **Upon Separation of Employment in Violation of**
11 **California Labor Code §§ 201, 202, 203,**
12 **204 and/or 204b, 218.5, and 218.6**
13 **(Against all Defendants)**

14 148. Plaintiffs re-allege and incorporate by reference the foregoing allegations
15 as though set forth herein.

16 149. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
17 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
18 (2018) 23 Cal.App.5th 745.

19 150. Pursuant to Labor Code § 201, "If an employer discharges an employee,
20 the wages earned and unpaid at the time of discharge are due and payable
21 immediately."

22 151. Pursuant to Labor Code § 202, "If an employee not having a written
23 contract for a definite period quits his or her employment, his or her wages shall
24 become due and payable not later than 72 hours thereafter, unless the employee has
25 given 72 hours previous notice of his or her intention to quit, in which case the
26 employee is entitled to his or her wages at the time of quitting."

27 152. Labor Code § 203 provides, in pertinent part: "If an employer willfully
28 fails to pay, without abatement or reduction, ... any wages of an employee who is

1 discharged or who quits, the wages of the employee shall continue as a penalty from
2 the due date thereof at the same rate until paid or until an action therefore is
3 commenced; but the wages shall not continue for more than 30 days. ..."

4 153. Pursuant to Labor Code § 204, "all wages ... earned by any person in any
5 employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays."

7 154. Alternatively, pursuant to Labor Code § 204b, employers must pay its
8 employees on a weekly basis on a regular day determined by the employer as the
9 regular payday.

10 155. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
11 the nonpayment of wages and fringe benefits.

12 156. Plaintiffs are informed and believe and based thereon allege that some
13 Aggrieved Employees were not properly paid pursuant to the requirements of Labor
14 Code §§ 201, 202, and 204/204b and thereby seek all remedies available to them.

15 157. At all material times, DEFENDANT EMPLOYER and DOES 1 through
16 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
17 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
18 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
19 Labor Code or any provision regulating hours and days of work in any Order of the
20 Industrial Welfare Commission and, as such, are subject to penalties for each
21 underpaid employee as set for in Labor Code § 558.

22 158. In committing the violations of state law as herein alleged, Defendants
23 have knowingly and willfully refused to perform their obligations to compensate
24 Aggrieved Employees for all wages earned and all hours worked.

25 159. As a direct result, Aggrieved Employees have suffered and continue to
26 suffer, substantial losses related to the use and enjoyment of such compensation,
27 wages, lost interest on such monies and expenses and attorney's fees in seeking to
28 compel Defendants to full perform their obligation under state law, all to their

1 respective damage in amounts according to proof at trial and within the jurisdictional
2 limitations of this Court.

3 160. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
4 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
5 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
6 pay period for each subsequent violation in which DEFENDANT EMPLOYER
7 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
8 applicable penalty is all in an amount to be shown according to proof at trial.

9 161. Wherefore, Plaintiffs request all remedies available to them pursuant to
10 the PAGA.

11 162. Plaintiffs on behalf of themselves and the putative Class request the
12 recovery of all penalties to which they may recover, interest, attorneys' fees, and costs
13 in an amount to be determined at trial.

14 **EIGHTH CAUSE OF ACTION**

15 **Representative Claim for PAGA Penalties**

16 **For Failure to Maintain and Provide Required Records in Violation of**

17 **California Labor Code § 1174**

18 **and the Applicable Wage Order and/or § 1198**

19 (Against all Defendants)

20 163. Plaintiffs re-allege and incorporate by reference the foregoing allegations
21 as though set forth herein.

22 164. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
23 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
24 (2018) 23 Cal.App.5th 745.

25 165. Section 7 of the typical Wage Order requires every employer to
26 maintain time and payroll records.

27 166. Plaintiffs are informed and believe and based thereon alleges that during
28 all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders

1 and with Labor Code § 1174 by failing to maintain certain records which employers
2 are required to maintain, including but not limited to, an accurate record indicating
3 the number hours worked by the Plaintiffs, evidenced in part by Defendants failure to
4 provide the named Plaintiff's time records despite his request.

5 167. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
6 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
7 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
8 pay period for each subsequent violation in which all culpable Defendants violated
9 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
10 of the applicable penalty is in an amount to be shown according to proof at trial.

11 168. Wherefore, Plaintiffs request all remedies available to them pursuant to
12 the PAGA.

13 **NINTH CAUSE OF ACTION**

14 **Individual and Class Claim for Remedies for Violations**

15 **of the California Unfair Business**

16 **Practices Code §§ 17200, *et seq.***

17 (Against all Defendants)

18 169. Plaintiffs re-allege and incorporate by reference the foregoing allegations
19 as though set forth herein.

20 170. Defendants, and each of them, are "persons" as defined under Business
21 and Professions Code § 17021.

22 171. Plaintiffs are informed and believe and based thereon allege that
23 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
24 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
25 Complaint and which allegations are incorporated herein by reference and which
26 allegations include, but are not limited to:

- 27 a. Failing to provide the Class and Plaintiffs an accurate
28 itemized wage statement in violation of § 226 of the

1 Labor Code;

2 b. Failure to reimburse employees for all employer incurred
3 expenses;

4 c. Failing to pay meal and rest break premiums; and

5 d. Failing to pay the Class and Plaintiffs all wages due and
6 owing including but not limited to overtime
7 compensation, minimum/regular wages, or both.

8 172. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and
9 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

10 173. The unlawful and unfair business practices conducted by Defendants,
11 and each of them, are ongoing and present a threat and likelihood of continuing
12 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

13 174. Plaintiffs have suffered injury in fact and lost money or property because
14 of the aforementioned unfair competition.

15 175. Because of their improper acts, Defendants, and each of them, have
16 reaped and continue to reap unfair benefits and illegal profits at the expense of
17 Plaintiffs and other employees and former employees of Defendants, and each of
18 them.

19 176. Defendants, and each of them, should be enjoined from this activity and
20 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the
21 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
22 Code §§ 17202 and/or 17203.

23 177. Plaintiffs and the Class have also incurred and continue to incur
24 attorneys' fees and legal expenses in an amount according to proof at the time of trial
25 and for which they seek compensation pursuant to law including but not limited to
26 Code of Civil Procedure § 1021.5.

1 **TENTH CAUSE OF ACTION**

2 **Representative Claim for Penalties via the PAGA**

3 **For Violations of California's Sick Pay Laws**

4 (Against all Defendants)

5 178. Plaintiffs re-allege and incorporate by reference the foregoing allegations
6 as though set forth herein.

7 179. Under Labor Code §§ 246 and 246(l), employers in California must
8 provide employees with paid sick leave to be paid at a specified rate of pay which
9 must factor in additional earnings during a given pay period wherein such leave is
10 used.

11 180. During their employment, the named Plaintiffs and Aggrieved
12 Employees earned sick pay, both under state and local law.

13 181. Pursuant to subdivision (i) of Labor Code § 246, “[a]n employer shall
14 provide an employee with written notice that sets forth the amount of paid sick leave
15 available, or paid time off leave an employer provides in lieu of sick leave, for use on
16 either the employee's itemized wage statement described in Section 226 or in a
17 separate writing provided on the designated pay date with the employee's payment of
18 wages.”

19 182. Based on the records Defendants provided thus far, Plaintiffs allege
20 Defendants failed to comply with subdivision (i) of Labor Code § 246 because none
21 of Plaintiff's wage statements reported “the amount of paid sick leave available.”

22 183. Defendants' failure to comply with the foregoing made it almost
23 virtually impossible for Plaintiffs to determine what sick pay they had available to
24 them.

25 184. The PAGA imposes upon Defendants, and each of them, civil penalties
26 for violating Labor Code § 246.

27 185. Civil penalties under the PAGA are equitable in nature. (*Nationwide*
28 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, (2020) 9 Cal.5th 279.)

1 186. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
2 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
3 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
4 employee for subsequent violations for all Labor Code provisions for which a civil
5 penalty is not specifically provided.

6 187. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
7 applicable statute, Plaintiffs seek civil penalties against Defendants in an amount to
8 be shown according to proof.

9 188. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiff seeks to
10 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
11 amount to be shown according to proof.

12 189. Pursuant to the PAGA, and/or Labor Code § 2699(g), Plaintiff seeks to
13 recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an
14 amount to be shown according to proof.

15 **ELEVENTH CAUSE OF ACTION**

16 **Representative Claim for Penalties via the PAGA**

17 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

18 **Individual and Representative Claim for PAGA Penalties and Wage**

19 **Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California**

20 **Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1,**
21 **203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d)**
22 **of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2,**
23 **230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c)**
24 **of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of**
25 **Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602,**
26 **603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021,**
27 **1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage**
28 **Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293,**

1 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
2 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
3 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
4 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651,
5 and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801,
6 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
7 and 6399.7 and the Applicable Wage Order

8 (Against all Defendants)

9 190. Plaintiffs re-allege and incorporate by reference the foregoing allegations
10 as though set forth herein.

11 191. This claim is premised on Plaintiffs' right to pursue all Labor Code
12 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
13 *USA, Inc.* (2018) 23 Cal.App.5th 745.

14 192. Pursuant to Labor Code § 2699, any provision of the Labor Code that
15 provides for a civil penalty to be assessed and collected by the LWDA or any of its
16 departments, divisions, commissions, boards, agencies or employees for violation of
17 the code may, as an alternative, be recovered through a civil action brought by an
18 aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code § 2699.3.

20 193. Plaintiffs are informed and believe, and based thereon allege that because
21 of the acts alleged above and Defendants' violations of the Labor Code provisions
22 alleged herein, Plaintiffs are entitled to penalties under Labor Code §§ 2698 and
23 2699.

24 194. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
25 by the alleged violator and had one or more of the alleged violations committed
26 against Plaintiffs, and therefore are properly suited to represent the interests of other
27 current and former Represented Employees.

28 195. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil

1 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
2 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
3 employee for subsequent violations for all Labor Code provisions for which a civil
4 penalty is not specifically provided.

5 196. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
6 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
7 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
8 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
9 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
10 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
11 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
12 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
13 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
14 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
15 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
16 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
17 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
18 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
19 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,
20 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
21 and 6399.7.

22 197. Labor Code § 558 establishes a civil penalty as follows: Any employer
23 or other person acting on behalf of an employer who violates, or causes to be violated,
24 a section of this chapter or any provision regulating hours and days of work in any
25 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
26 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
27 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
28 which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
2 each underpaid employee for each pay period for which the employee was underpaid
3 in addition to an amount sufficient to recover underpaid wages; and (3) wages
4 recovered pursuant to this section shall be paid to the affected employee.

5 198. Wherefore, Plaintiffs request all remedies available to them pursuant to
6 the PAGA.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 9 1. An order that this action may proceed and be maintained as a class
10 action;
- 11 2. For appointment of the named Plaintiff as the representative of the
12 Class;
- 13 3. For appointment of counsel for Plaintiffs as Class Counsel;
- 14 4. That the Court award to Plaintiffs and/or the Class and/or Aggrieved
15 Employees damages for the amount subject to proof at trial;
- 16 5. For payment of all unpaid wages and reimbursements subject to proof
17 at trial;
- 18 6. That Defendants, and each of them, be ordered and enjoined to pay
19 restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to
20 Business and Professions Code §§ 17200-05;
- 21 7. That Defendants, and each of them, be required to issue to Plaintiffs
22 and/or the Class and/or Aggrieved Employees accurate wage and earning
23 statements;
- 24 8. For maximum civil penalties available under the Labor Code and
25 applicable Wage Order as described more particularly in this Complaint,
26 representative PAGA claims including the payment of wages as set forth in Labor
27 Code § 558;
- 28 9. For Labor Code § 226(e) penalties in the amount of \$4,000.00;

- 1 10. For costs, interest, special and general damages;
- 2 11. That Plaintiffs and/or the Class and/or Aggrieved Employees be
- 3 awarded reasonable attorneys' fees where available by law, including but not limited
- 4 to pursuant to Labor Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or
- 5 other applicable laws; and
- 6 12. Such other and further relief as this Court may deem proper and just.

7 Dated: October 16, 2023

Law Office of
Thomas D. Rutledge

9
10 By: Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for Plaintiffs

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a jury trial of this matter.

14 Dated: October 16, 2023

Law Office of
Thomas D. Rutledge

16
17 By: Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for the Plaintiffs

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