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By

/s/ **Haley Correa**

Deputy Clerk

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (SBN 297296)

jeff@tomorrowlaw.com

Sarah H. Cohen (SBN 330700)

sarah@tomorrowlaw.com

Michael Braud (SBN 345573)

michael@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, CHRISTINA

BATERINA PADA MORALES and on behalf

of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

CHRISTINA BATERINA PADA MORALES,
an individual and on behalf of all others
similarly situated,

Plaintiff,

v.

MILLBRAE CARE CENTER, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 23-CIV-04710

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE § 2698, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

Action Filed:

October 6, 2023

1 Plaintiff Christina Baterina Pada Morales, on behalf of Plaintiff and all others similarly
2 situated and aggrieved, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 Millbrae Care Center, LLC, and any of its respective subsidiaries or affiliated companies within the
7 State of California (“Millbrae Care Center” or “Defendant”) on behalf of Plaintiff and all other
8 current and former non-exempt California employees employed by or formerly employed by
9 Defendants (“Class Members”).

10 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
11 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendant,
12 and any of their respective subsidiaries or affiliated companies within the State of California, as a
13 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
14 behalf of Plaintiff and all other current and former non-exempt employees of Defendant working
15 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
16 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
17 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 245, *et seq.*,
18 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty
19 Period (collectively, “Aggrieved Employees”).

20 **PARTIES**

21 **A. Plaintiff**

22 3. Plaintiff Christina Baterina Pada Morales is a resident of the State of California. At
23 all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that
24 Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not
25 limited to, providing care for individuals including, but not limited to, checking on patients;
26 attending to administrative tasks of patients; feeding, showering, and changing diapers of patients;
27 monitoring patients; documenting patient issues; and cleaning up patient areas and other areas of
28 Defendant’s facility. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff

Christina Bateria Pada Morales worked for Defendants from approximately December of 2020 and through approximately March of 2023.

B. Defendants

4. Plaintiff is informed and believes and based thereon alleges that defendant Millbrae Care Center, LLC is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of San Mateo, State of California.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include Millbrae Care Center, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

6. Plaintiff is informed and believes and based thereon alleges that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such agency, employment, joint venture, and conspiracy.

7. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate

1 employers, and the officers and management-level employees of said corporate employers. In
2 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
3 their said employees, agents, and representatives, and each of them; and upon completion of the
4 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
5 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
6 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
7 aforementioned corporate employees, agents and representatives.

8 8. Plaintiff is informed and believes, and based thereon alleges that despite the
9 formation of the purported corporate existence of Millbrae Care Center, and DOES 1 through 50,
10 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES
11 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
12 reasons:

- 13 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
14 Defendants who personally committed the wrongful and illegal acts and violated the
15 laws as set forth in this Complaint, and who has hidden and currently hide behind the
16 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
17 other wrongful or inequitable purpose;
- 18 B. The Individual Defendants derive actual and significant monetary benefits by and
19 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
20 Defendants as the funding source for the Individual Defendants’ own personal
21 expenditures;
- 22 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
23 and the Alter Ego Defendants, while really one and the same, were segregated to
24 appear as though separate and distinct for purposes of perpetrating a fraud,
25 circumventing a statute, or accomplishing some other wrongful or inequitable
26 purpose;
- 27 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
28 Individual Defendants and the Alter Ego Defendants are, and at all relevant times

1 mentioned herein were, so mixed and intermingled that the same cannot reasonably
2 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
3 are, and at all relevant times mentioned herein were, used by the Individual
4 Defendants as mere shells and conduits for the conduct of certain of their, and each
5 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
6 herein were, the alter egos of the Individual Defendants;

7 E. The recognition of the separate existence of the Individual Defendants and the Alter
8 Ego Defendants would promote injustice insofar that it would permit defendants to
9 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
10 Code, and other statutory violations. The corporate existence of these defendants
11 should thus be disregarded in equity and for the ends of justice because such
12 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

13 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
14 Defendants (and vice versa), and the fiction of their separate corporate existence
15 must be disregarded;

16 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
17 thereon alleges that Defendants, and each of them, are joint employers.

18 **JURISDICTION**

19 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
20 of Civil Procedure section 410.10.

21 11. Venue is proper in San Mateo County, California pursuant to Code of Civil
22 Procedure sections 392, et seq. because, among other things, San Mateo County is where the causes
23 of action complained of herein arose; the county in which the employment relationship began; the
24 county in which performance of the employment contract, or part of it, between Plaintiff and
25 Defendants was due to be performed; the county in which the employment contract, or part of it,
26 between Plaintiff and Defendants was actually performed; and the county in which Defendants, or
27 some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
28 and Class Members in San Mateo County, and because Defendants employ numerous Class

1 Members in San Mateo County.

2 12. Plaintiffs are each an “aggrieved employee” under PAGA, as they were employed
3 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations set forth herein. Accordingly, Plaintiffs seek to recover, on behalf of themselves and all
5 other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA
6 plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v.*
7 *Superior Court* (2019) 8 Cal.5th 175.

8 13. Plaintiffs seek to recover the PAGA civil penalties through a representative action
9 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
10 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
11 allegations described herein is not required.

12 14. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
15 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

16 15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
17 such as Plaintiffs, on behalf of themselves and all other aggrieved current and former employees
18 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
19 specified in Labor Code section 2699.3.

20 16. On or around December 30, 2022, Plaintiff provided written notice under Labor Code
21 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
22 of various, including the herein-described, provisions of the Labor Code, to the Labor and
23 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
24 requested to Defendants, and each of them.

25 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the December 30, 2022 postmarked date of the herein-described notice sent by
28 Plaintiffs to the LWDA and Defendants.

FACTUAL BACKGROUND

18. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early to work and leave late work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to make phone calls off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to the detriment of Plaintiff and Class Members.

19. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early to work and leave late work without being able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in

1 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
2 out for rest periods, to make phone calls off the clock; detrimental rounding of employee time
3 entries; editing and/or manipulation of time entries to show less hours than actually worked; failing
4 to pay split shift premiums; and failing to pay reporting time pay to the detriment of Plaintiff and
5 Class Members.

6 20. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
8 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
9 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
10 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
11 for such unprovided meal periods as required by California wage and hour laws.

12 21. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
14 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
15 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
16 California wage and hour laws.

17 22. For at least three (3) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
19 full amount of their wages owed to them upon termination and/or resignation as required by Labor
20 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
21 minimum wages, and premium wages.

22 23. For at least one (1) year prior to the filing of this Action and continuing to the present,
23 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
24 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
25 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate; and other such information as required by Labor Code section
27 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
28 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

1 24. For at least one (1) year prior to the filing of this action and continuing to the present,
2 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
3 amount of their wages for labor performed in a timely fashion as required under Labor Code section
4 204.

5 25. For at least three (3) years prior to the filing of this action and continuing to the
6 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
7 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
8 laundering mandatory work uniforms; using cellular phones for work-related purposes; and
9 purchasing tools necessary to perform work duties.

10 26. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
12 situated employees or former employees within the State of California with the rights provided to
13 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section
14 245, *et seq.*

15 27. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
16 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
17 245, *et seq.*, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section
18 11040, seeking overtime wages, minimum wages, payment of premium wages, costs, and/or
19 penalties for missed meal and rest periods; failure to pay timely wages; waiting time penalties; wage
20 statement penalties; failure to indemnify work-related expenses; and other such provisions of
21 California law, and reasonable attorneys' fees and costs.

22 28. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
23 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
24 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
25 appropriate and effective means to prevent further violations, as well as all monies owed but
26 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
27 restitution of amounts owed.

28 29. At all relevant times mentioned herein, Defendants have had a policy or practice of

1 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
2 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
3 Employees with the rates of pay and overtime rates of pay applicable to their employment;
4 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
5 name, address, and telephone number of the workers' compensation insurance carrier; information
6 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
7 under Labor Code section 2810.5.

8 30. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
9 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
10 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
11 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
12 all other Aggrieved Employees.

13 31. At all relevant times mentioned herein, Defendants have had a policy or practice of
14 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
15 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
16 any calendar month shall be paid for between the 16th and 26th day of the month during which the
17 labor was performed, and labor performed between the 16th and the last day, inclusive of any
18 calendar month, shall be paid for between the 1st and 10th day of the following month."

19 32. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
21 and experience they obtained at Defendants for purposes of competing with Defendants, including,
22 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
23 a prospective employer, and from disclosing who else works at Defendants and under what
24 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
25 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
26 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
27 Code sections 232, 232.5, and 1197.5, subdivision (k).

28 33. Defendants had and have a policy or practice of preventing Plaintiff and/or other

1 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
2 to their managers or outside to private attorneys or government officials, among others, in violation
3 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
4 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
5 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
6 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
7 of Labor Code section 232 and 232.5.

8 34. Defendants had and have a policy or practice of preventing Plaintiff and/or other
9 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
10 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
11 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
12 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
13 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
14 economic liberty.

15 35. Plaintiffs, in their representative capacity, seek civil penalties under Labor Code
16 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
17 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
18 Employees pursuant to PAGA.

19 **CLASS ACTION ALLEGATIONS**

20 14. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
21 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
22 and former non-exempt employees of Defendants within the State of California at any time
23 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
24 of the class action is provided to the class (collectively referred to as "Class Members").

25 15. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
26 to amend or modify the class description with greater specificity, further divide the defined class
27 into subclasses, and to further specify or limit the issues for which certification is sought.

28 16. This action has been brought and may properly be maintained as a class action under

1 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
2 of interest in the litigation and the proposed Class is easily ascertainable.

3 **A. Numerosity**

4 17. The potential Class Members as defined are so numerous that joinder of all the
5 members of the Class is impracticable. While the precise number of Class Members has not been
6 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
7 Members employed by Defendants within the State of California.

8 18. Accounting for employee turnover during the relevant periods necessarily increases
9 this number. Plaintiff alleges Defendants' employment records would provide information as to the
10 number and location of all Class Members. Joinder of all members of the proposed Class is not
11 practicable.

12 19. There are questions of law and fact common to Class Members. These common
13 questions include, but are not limited to:

- 14 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
15 worked at a proper overtime rate of pay?
- 16 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
17 for all other time worked at the employee's regular rate of pay and a rate of pay that
18 is greater than the applicable minimum wage?
- 19 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
20 Class Members to take compliant meal periods?
- 21 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
22 with additional wages for missed or interrupted meal periods?
- 23 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
24 Class Members to take compliant rest periods?
- 25 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
26 with additional wages for missed rest periods?
- 27 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
28 Members upon termination or resignation all wages earned?

- 1 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
2 section 203?
- 3 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
4 Class Members with accurate wage statements?
- 5 J. Did Defendants fail to pay Class Members in a timely fashion as required under
6 Labor Code section 204?
- 7 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
8 losses incurred in direct consequence of the discharge of their duties or by obedience
9 to the directions of Defendants as required under Labor Code section 2802?
- 10 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
11 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 12 M. Are Class Members entitled to restitution of wages under Business and Professions
13 Code section 17203?
- 14 N. Are Class Members entitled to costs and attorneys' fees?
- 15 O. Are Class Members entitled to interest?

16 **B. Typicality**

17 20. The claims of Plaintiff herein alleged are typical of those claims which could be
18 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
19 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
20 damages arising out of and caused by Defendants' common course of conduct in violation of laws
21 and regulations that have the force and effect of law and statutes as alleged herein.

22 **C. Adequacy of Representation**

23 21. Plaintiff will fairly and adequately represent and protect the interest of Class
24 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
25 hour class actions.

26 **D. Superiority of Class Action**

27 22. A class action is superior to other available means for the fair and efficient
28 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to Class Members predominate over any questions affecting only
2 individual Class Members. Class Members, as further described therein, have been damaged and
3 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
4 violation of the Labor Code at times, as set out herein.

5 23. Class action treatment will allow Class Members to litigate their claims in a manner
6 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
7 any difficulties that are likely to be encountered in the management of this action that would
8 preclude its maintenance as a class action.

9 **FIRST CAUSE OF ACTION**

10 **(Failure to Pay Overtime Wages – Against All Defendants)**

11 24. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs as though fully set forth hereat.

13 25. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
15 Wage Orders.

16 26. At all times relevant to this Complaint, Labor Code section 510 was in effect and
17 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
18 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
19 at the rate of no less than one and one-half times the regular rate of pay for an employee."

20 27. At all times relevant to this Complaint, Labor Code section 510 further provided that
21 "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
22 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
23 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
24 pay."

25 28. Four (4) years prior to the filing of the Complaint in this Action through the present,
26 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
27 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
28 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a

1 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
2 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
3 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
4 early to work and leave late work without being able to clock in for all that time, to complete pre-
5 shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
6 and continue working, to clock out for rest periods, to make phone calls off the clock, and/or go
7 through security screenings and/or temperature checks off the clock; failing to include all forms of
8 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
9 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods
10 where overtime was worked and the additional compensation was earned for the purpose of
11 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
12 manipulation of time entries to the detriment of Plaintiff and Class Members.

13 29. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
14 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
15 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
16 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
17 applicable IWC Wage Orders, and California law.

18 30. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
19 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
20 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
21 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

22 **SECOND CAUSE OF ACTION**

23 **(Failure to Pay Minimum Wages – Against All Defendants)**

24 31. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 32. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

28 33. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and

1 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
2 Defendants' control.

3 34. For four (4) years prior to the filing of the Complaint in this Action through the
4 present, Defendants failed to accurately track and/or pay for all hours actually worked at the proper
5 overtime rate of pay; engaged, suffered, or permitted employees to work off the clock, including,
6 without limitation, by requiring Plaintiff and Class Members: to come early to work and leave late
7 work without being able to clock in for all that time, to complete pre-shift tasks before clocking in
8 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
9 out for rest periods, to make phone calls off the clock, and/or go through security screenings and/or
10 temperature checks off the clock; failed to include all forms of remuneration, including non-
11 discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms
12 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
13 additional compensation was earned for the purpose of calculating the overtime rate of pay;
14 performed detrimental rounding of employee time entries; and/or edited and/or manipulated time
15 entries to the detriment of Plaintiff and Class Members.

16 35. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
17 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
18 for all hours worked or otherwise due.

19 36. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
20 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
21 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
22 damages, reasonable attorneys' fees and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **(Failure to Provide Meal Periods – Against All Defendants)**

25 37. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth hereat.

27 38. At all relevant times, Plaintiff and Class Members were employees or former
28 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

39. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

40. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

41. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided compliant meal periods.

42. By their failure to provide Plaintiff and Class Members compliant meal periods as contemplated by Labor Code section 512, among other California authorities, and failing, at times, to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage Orders.

43. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

44. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

45. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

46. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

47. California law and applicable Wage Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

48. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

49. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

50. By their failure, at times, to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

51. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay

1 owed for rest periods that they were not authorized or permitted to take.

2 52. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
3 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
4 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
5 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

6 **FIFTH CAUSE OF ACTION**

7 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

8 53. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 54. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
12 Wage Orders.

13 55. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
14 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
15 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
16 discharge immediately upon termination. Class Members who resigned were entitled to payment
17 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
18 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
19 unpaid at the time of resignation.

20 56. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
21 years before the filing of the Complaint in this Action through the present, Defendants, due to the
22 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
23 Members all wages earned prior to resignation or termination in accordance with Labor Code
24 sections 201 or 202.

25 57. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
26 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
27 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
28 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,

1 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
2 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
3 or resignation.

4 58. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
5 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
6 resignation, until paid, up to a maximum of thirty (30) days.

7 59. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
9 prior to termination or resignation.

10 60. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
11 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
12 waiting time penalties, interest, and their costs of suit, as well.

13 **SIXTH CAUSE OF ACTION**

14 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

15 61. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth hereat.

17 62. At all relevant times, Plaintiff and Class Members were employees or former
18 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

19 63. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
20 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
21 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
22 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate; among other things.

24 64. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
25 before the filing of the Complaint in this Action through the present, Defendants failed to comply
26 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
27 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
28 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; among other things.

3 65. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
4 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
5 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
6 provided wage statements that Defendants knew were not accurate.

7 66. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered injury. The absence of accurate information on Class Members' wage statements at times
9 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
10 mathematical computations to determine the amount of wages owed; causes difficulty and expense
11 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
12 about wages and amounts deducted from wages to state and federal governmental agencies, among
13 other things.

14 67. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
15 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
16 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
17 pay period, not to exceed an aggregate \$4,000.00 per employee.

18 68. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
19 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
20 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
21 attorneys' fees, and costs of suit.

22 **SEVENTH CAUSE OF ACTION**

23 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

24 69. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
25 incorporate each by reference as though fully set forth hereat.

26 70. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

28 71. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th

1 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
2 during which the labor was performed, and labor performed between the 16th and the last day,
3 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
4 month.”

5 72. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
6 independent and apart from, any other penalty provided in this article, every person who fails to pay
7 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
8 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
9 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
10 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
11 percent of the amount unlawfully withheld.”

12 73. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
13 before the filing of the Complaint in this Action through the present, Defendants employed policies
14 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
15 Labor Code section 204.

16 74. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
17 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
18 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
19 for each subsequent violation in connection with each payment that was made in violation of Labor
20 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

21 75. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
22 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
23 interest, and their costs of suit, as well.

24 **EIGHTH CAUSE OF ACTION**

25 **(Violation of Labor Code § 2802 – Against All Defendants)**

26 76. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

28 77. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

2 78. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
3 his or her employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties . . .”

5 79. For three (3) years prior to the filing of the Complaint in this Action through the
6 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
7 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
8 obedience to the directions of Defendants that included, without limitation: purchasing and/or
9 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
10 using cellular phones for work-related purposes; and purchasing tools and/or equipment necessary
11 to perform work duties.

12 80. During that time period, Plaintiff is informed and believes, and based thereon alleges
13 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand
14 Class Members for those losses and/or expenditures.

15 81. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
16 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
17 herein-described losses and/or expenditures.

18 82. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
19 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
20 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
21 costs of suit.

22 **NINTH CAUSE OF ACTION**

23 **(Unfair Competition – Against All Defendants)**

24 83. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 84. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
27 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
28 Professions Code section 17200. Plaintiff is further informed and believes and based thereon alleges

1 that in addition to the unlawful conduct of Defendants alleged in the preceding paragraphs, for at
2 least four (4) years prior to the filing of this action and continuing to the present, Defendants have
3 had a consistent policy of failing to provide Plaintiff and similarly situated employees or former
4 employees within the State of California with the rights provided to them under the Healthy
5 Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.* Due to their
6 unlawful business practices in violation of the Labor Code, Defendants have gained a competitive
7 advantage over other comparable companies doing business in the State of California that comply
8 with their obligations to compensate employees in accordance with the Labor Code.

9 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
10 Members have suffered injury in fact and lost money or property.

11 86. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
12 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
13 Code and requiring the establishment of appropriate and effective means to prevent further
14 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
15 including interest thereon, in which they had a property interest and which Defendants nevertheless
16 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
17 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
18 by their failure to comply with the Labor Code.

19 87. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
20 Procedure section 1032 and interest under Civil Code section 3287.

21 **TENTH CAUSE OF ACTION**

22 88. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
23 preceding paragraphs as though fully set forth hereat.

24 **Civil Penalties Under Labor Code § 210**

25 89. At all relevant times herein, Labor Code section 204, requires and required that:
26 "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
27 between the 16th and 26th day of the month during which the labor was performed, and labor
28 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for

1 between the 1st and 10th day of the following month.”

2 90. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
3 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
4 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
5 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
6 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
7 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
8 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

9 91. At all relevant times herein, Defendants have had a consistent policy or practice of
10 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
11 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
12 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
13 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
14 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
15 for each subsequent violation in connection with each payment that was made in violation of Labor
16 Code section 204.

17 Civil Penalties Under Labor Code § 226.3

18 92. Defendants had and have a policy or practice of failing to comply with Labor Code
19 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
20 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
21 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate; and other such information as required
23 by Labor Code section 226, subdivision (a).

24 93. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
25 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
26 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
27 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
28 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

94. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in this section are in addition to any other penalty provided by law.”

95. Plaintiffs are informed and believe, and based thereon allege, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiffs, itemized wage statements that accurately reflect: reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a).

96. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 558

97. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- A. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- B. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- C. Wages recovered pursuant to this section shall be paid to the affected employee.

98. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime

1 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
2 regular payday designated by Employer, the name of the employer, including any “doing business
3 as” names used, the name, address and telephone number of the workers’ compensation insurance
4 carrier, information regarding paid sick leave, and other pertinent information.

5 99. As a direct and proximate result of the herein-described Labor Code violations,
6 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to
7 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty
8 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred
9 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

10 Violation of Labor Code § 1174.5

11 100. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
12 every person employing labor in California to “[a]llow any member of the commission or the
13 employees of the Division of Labor Standards Enforcement free access to the place of business or
14 employment of the person to secure any information or make any investigation that they are
15 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
16 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
17 or papers of the person.”

18 101. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
19 every person employing labor in California to “[k]eep a record showing the names and addresses of
20 all employees employed and the ages of all minors.”

21 102. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
22 every person employing labor in California to “[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
25 piece rate paid to, employees employed at the respective plants or establishments. These records
26 shall be kept in accordance with rules established for this purpose by the commission, but in any
27 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
28 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units

1 earned.”

2 103. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
3 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
4 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
5 member of the commission or employees of the division to inspect records pursuant to subdivision
6 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

7 104. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
8 willfully failed keep adequate or accurate time records including wage statements and similar
9 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
10 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
11 under Labor Code section 1174.

12 105. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
15 hundred dollars (\$500) per violation per Aggrieved Employee.

16 Violation of Labor Code § 1197.1

17 106. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
18 person acting either individually or as an officer, agent, or employee of another person, who pays
19 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
20 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
21 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
22 Section 203 as follows:

23 A. For any initial violation that is intentionally committed, one hundred dollars (\$100)
24 for each underpaid employee for each pay period for which the employee is
25 underpaid. This amount shall be in addition to an amount sufficient to recover
26 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
27 penalties imposed pursuant to Section 203.

28 B. For each subsequent violation for the same specific offense, two hundred fifty dollars

1 (\$250) for each underpaid employee for each pay period for which the employee is
2 underpaid regardless of whether the initial violation is intentionally committed. This
3 amount shall be in addition to an amount sufficient to recover underpaid wages,
4 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
5 pursuant to Section 203.

6 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
7 Section 203, recovered pursuant to this section shall be paid to the affected
8 employee.”

9 107. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
10 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
11 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
12 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
13 and liquidated damages.

14 108. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
17 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
18 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
19 subsequent violation.

20 Civil Penalties Under Labor Code § 2699

21 109. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
22 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
23 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
24 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
25 action brought by an aggrieved employee on behalf of himself or herself and other current or former
26 employees pursuant to the procedures specified in Labor Code section 2699.3.

27 110. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
28 Code except those for which a civil penalty is specifically provided, the established civil penalty for

1 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation.

5 111. Plaintiffs are informed and believe, and based thereon allege that Defendants, and
6 each of them, violated the Labor Code sections described herein, including, without limitation, for
7 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
8 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
9 name of the employer, including any “doing business as” names used, the name, address and
10 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
11 leave, and other pertinent information required to be disclosed by Employer under Labor Code
12 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
13 sick leave required to be provided pursuant to California and local laws.

14 112. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
15 whom Plaintiff seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
16 connection with their herein-described claims for civil penalties.

17 **DEMAND FOR JURY TRIAL**

18 113. Plaintiff demands a trial by jury on all causes of action contained herein.

19 **PRAYER**

20 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
21 against Defendants as follows:

- 22 A. An order certifying this case as a Class Action;
- 23 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
24 counsel as class counsel;
- 25 C. Damages for all wages earned and owed, including minimum and overtime wages,
26 under Labor Code sections 510, 1194, 1197 and 1199;
- 27 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 28 E. Damages for unpaid premium wages from missed meal and rest periods under,

1 among other Labor Code sections, 512 and 226.7;

2 F. Penalties for inaccurate wage statements under Labor Code section 226,
3 subdivision (e);

4 G. Waiting time penalties under Labor Code section 203;

5 H. Penalties to timely pay wages under Labor Code section 210;

6 I. Damages under Labor Code sections 2802;

7 J. Preliminary and permanent injunctions prohibiting Defendants from further
8 violating the California Labor Code and requiring the establishment of appropriate
9 and effective means to prevent future violations;

10 K. Restitution of wages and benefits due which were acquired by means of any unfair
11 business practice, according to proof;

12 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;

13 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1174.5, 1197.1, and 2699;

15 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1174.5, 1197.1, and 2699;

17 O. For attorneys' fees in prosecuting this action;

18 P. For costs of suit incurred herein; and

19 Q. For such other and further relief as the Court deems just and proper.

20
21 Dated: January 5, 2024

BIBIYAN LAW GROUP, P.C.

22
23 BY: */s/ Michael E. Braud*

24 DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

MICHAEL E. BRAUD

25
26 Attorneys for Plaintiff CHRISTINA BATERINA
27 PADA MORALES on behalf of herself and all others
28 similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO

I am employed in the County of San Mateo, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On January 5, 2024, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Christine Starkie (SBN 226354)
Katherine S. Catlos (SBN 184227)
Shirley Luk (SBN 347302)
KAUFMAN DOLOWICH LLP
425 California Street, Suite 2100
San Francisco, California 94104 Telephone: (415)
926-7600 / Facsimile: (415) 926-7601
Email: cstarkie@kaufmandolowich.com
KCatlos@kaufmandolowich.com
shirley.luk@kaufmandolowich.com

Counsel for Defendant, Millbrae Care Center, LLC

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 5, 2024, at Beverly Hills, California.

/s/ Maxwell Kim
Maxwell Kim