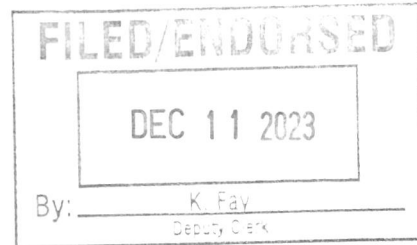


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COPY



Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Neil M. Larsen, Esq. # 276490
neil@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Boulevard
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

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

JENSEN BARNES, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

MISSION CARMICHAEL POST ACUTE,
LLC, a limited liability company; and DOES 1
through 100, Inclusive,

Defendants.

Case No. 23CV009678

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226, *et seq.*);
- (2) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 1198);
- (3) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (4) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- (5) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jensen Barnes (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby bring this Class and Representative Action Complaint against Mission Carmichael Post
3 Acute, LLC, a limited liability company; and Does 1 through 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et seq.*; Labor Code sections 201-203, 226, 226.7,
9 516, 1198, 2698, *et seq.*; and Industrial Welfare Commission Wage Order No. 5 (“Wage Order
10 5”), in addition to seeking declaratory relief and restitution. This class action is brought pursuant
11 to California Code of Civil Procedure section 382. This Court has jurisdiction over this matter
12 because the amount in controversy exceeds the Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in Sacramento County. Defendants own, maintain offices, transact business, have an
17 agent or agents within Sacramento County, and/or otherwise are found within Sacramento
18 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
22 the filing of this action and within the statute of limitations periods applicable to each cause of
23 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
24 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
25 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
26 203, 226, 226.7, 516, 1198, 2698, *et seq.*; California Business & Professions Code § 17200, *et*
27 *seq.* (Unfair Competition), and Wage Order 5, which sets employment standards for the public
28 housekeeping industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
2 year preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a skilled nursing facility, and that they employed Plaintiff and other similarly situated
4 non-exempt employees within Sacramento County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 15) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 15).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately July 2022 until approximately December 2022.

1 10. During Plaintiff’s employment with Defendants, Plaintiff and other non-exempt
2 employees were provided inaccurate wage statements by Defendants, in that the wage statements
3 failed to list the correct total hours worked and therefore, failed to comply with Labor Code §
4 226(a)(2). Specifically, the wage statements issued by Defendants generally included a line item
5 titled “Total Hrs Worked,” but they only counted the employee’s *overtime and/or double-time*
6 hours among “Total Hrs Worked,” excluding regular hours worked. For example, in the pay
7 period of December 1-15, 2022, Plaintiff’s wage statement reflects 71.55 regular hours, 7.83
8 overtime hours, 3.0 meal premium hours, and 18.91 PTO hours. The same wage statement
9 reported Plaintiff’s “Total Hrs Worked” as 7.83 hours, thereby only including Plaintiff’s overtime
10 hours as “hours worked” and incorrectly excluding his regular hours from total hours worked.
11 Plaintiff is informed and believes, and based thereon alleges, that Defendants continue to issue
12 wage statements to non-exempt employees that include inaccurate representations of total hours
13 worked.

14 11. Defendants have also failed to provide all legally required meal periods to Plaintiff
15 and other non-exempt employees. For example, Plaintiff’s time records for July 16, 2022 reflects
16 that Plaintiff worked from 11:30 a.m. to 7:30 p.m., with a lunch commencing at 5:30 p.m. – six
17 and a half hours into his shift. Similarly, on December 3, 2022, Plaintiff’s time record reflects
18 that he began working at 5:25 a.m. but did not receive his meal period until 10:36 a.m., more than
19 5 hours into his shift. As another example, on December 15, 2022, Plaintiff’s time record reflects
20 that he worked more than 10 hours – from 5:32 a.m. to 4:06 p.m. – but was not provided a second
21 meal period.

22 12. Defendants have also failed to authorize and permit rest periods to Plaintiff and
23 other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-
24 minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other
25 non-exempt employees were frequently unable to take the rest periods to which they were entitled
26 as a result of the workload imposed by Defendants. In those instances that Defendants failed to
27 authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest
28 period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon

information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

13. As a result of Defendants' failure to pay all rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

14. As a further result of Defendants' failure to pay all rest period premium wages, Defendants have maintained inaccurate payroll records, and issued inaccurate wage statements.

CLASS ACTION ALLEGATIONS

15. Class Definition: Plaintiff bring this action on behalf of himself and the following Class pursuant to Section 382 of the Code of Civil Procedure:

a. The Wage Statement Class consists of (i) all of the Defendants' current and former non-exempt employees in California who were issued a wage statement that did not count regular hours among "total hours worked," and (ii) all members of the Rest Period Class (defined below) who received a wage statement, at any time from one year immediately preceding the filing of this action through the present.

b. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

c. The Waiting Time Class consists of all members of the Rest Period Class who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately prior to the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Class are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Class is unknown to Plaintiff at this time; however, it is estimated that the Class number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via Defendants' employment records.

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1 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
2 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
3 situated employees, which predominate over questions affecting only individual members
4 including, without limitation to:

- 5 i. Whether Defendants furnished legally compliant wage statements to
6 members of the Wage Statement Class pursuant to Labor Code § 226;
7 ii. Whether Defendants authorized and permitted legally compliant rest
8 periods to members of the Rest Period Class; and
9 iii. Whether Defendants paid all wages due to members of the Waiting Time
10 Class at the time of separation of employment.

11 18. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' wage statement,
15 rest period, and final wage policies/practices. As such, the common questions predominate over
16 individual questions concerning each individual class member's showing as to his or her
17 eligibility for recovery or as to the amount of his or her damages.

18 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the
20 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
21 alleged herein, Plaintiff, like the members of the Class, was furnished with inaccurate wage
22 statements that failed to accurately list Plaintiff's total hours worked, was subject to Defendants'
23 uniform rest period policies/practices, and was deprived of all final wages upon his separation of
24 employment from Defendants.

25 20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
26 steps to represent fairly and adequately the interests of the members of the Class. Moreover,
27 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
28 the Class and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class

actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Class.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of individual Class members are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Thus, the Class identified in Paragraph 15 is maintainable under Code Civ. Proc. § 382.

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1 **FIRST CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and the Wage Statement Class with accurate and complete itemized wage statements that
8 included, among other requirements, an accurate representation of total hours worked, in violation
9 of Labor Code § 226.

10 24. Defendants' failure to furnish Plaintiff and Wage Statement Class members with
11 complete and accurate itemized wage statements resulted in injury, as said failure created
12 confusion over the total number of hours worked and deprived Wage Statement Class members
13 of, among other things, the information necessary to effectively comprehend their actual total
14 number of hours worked.

15 25. Defendants' failures create an entitlement to recovery by Plaintiff and members of
16 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
17 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
18 of suit according to California Labor Code §§ 226 and 226.3.

19 **SECOND CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 27. Labor Code §§ 226.7 and 516, and Wage Order 5, § 12 establish the right of
24 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
25 (4) hour period worked, or major fraction thereof.

26 28. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest
27 Period Class members to take their legally entitled rest periods. Defendants also failed to
28 compensate Plaintiff and Rest Period Class members with a rest period premium for each rest

1 period to which they were entitled while working. The foregoing violations create an entitlement
2 to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of
3 rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
4 costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil
5 Code § 3287; and Art. XV, § 1 of the California Constitution.

6 **THIRD CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(AGAINST ALL DEFENDANTS)**

9 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 30. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
11 an employer to pay all wages immediately at the time of separation of employment in the event
12 the employer discharges the employee, or the employee provides at least 72 hours of notice of
13 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
14 to quit, said employee's wages become due and payable not later than 72 hours upon said
15 employee's last date of employment.

16 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
18 at their separation from employment, including (but not limited to) unpaid rest period premium
19 wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of
20 uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the
21 Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to
22 the requirements of Labor Code §§ 201-203.

23 32. Defendants' failure to pay all final wages was willful within the meaning of Labor
24 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
25 Time Class their earned wages upon separation from employment results in a continued payment
26 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
27 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
28 attorneys' fees and costs of suit.

1 **FOURTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 34. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to
7 authorize and permit Plaintiff and the Classes rest periods or pay rest period premium wages,
8 failing to furnish accurate and complete itemized wage statements, and failing to pay all earned
9 wages at separation of employment.

10 35. Defendants' utilization of these unfair and/or unlawful business practices has
11 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
12 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
13 Defendants' competitors who have been and/or are currently employing workers and attempting
14 to do so in honest compliance with applicable wage and hour laws.

15 36. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
16 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
17 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
18 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

19 37. The acts complained of herein occurred within the four years immediately
20 preceding the filing of this action.

21 38. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
23 of Defendants' current non-exempt employees, and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which he is entitled to recover under Code of Civil Procedure § 1021.5.

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FIFTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees’ respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- b. Failing to provide all required meal periods to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1998;
- c. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

d. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;

41. On or about October 6, 2023, Plaintiff notified Defendant Mission Carmichael Post Acute LLC via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 40 (a)-(d) above. Now that sixty-five (65) days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

42. Based on the foregoing, Plaintiff seeks to represent himself, the State of California, and all aggrieved employees as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the submission of Plaintiff’s PAGA notice to the present.

43. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as representative of the Class;
3. For an order appointing counsel for Plaintiff as counsel for the Class;
4. Upon the First Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

1 6. Upon the Third Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code §§ 201-203;

3 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and the members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
6 *seq.*;

7 8. Upon the Fifth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
8 employees, and the State of California according to proof pursuant to Labor Code § 2699,
9 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
10 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
11 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
12 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
13 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
14 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
15 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
16 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
17 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
18 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
19 Labor Code § 2699(f);

20 9. Prejudgment interest on all due and unpaid wages and other damages pursuant to
21 California Civil Code § 3287 and Art. XV, § 1 of the California Constitution;

22 10. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
23 226(e), 2699(g), Code of Civil Procedure § 1021.5, and all other relevant statutes; and

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25 ///

26 ///

27 ///

28 ///

1 11. For such other and further relief the Court may deem just and proper.

2
3 Date: December 11, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

4
5 By:



Tuvia Korobkin
Attorney for Plaintiff

6
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

9
10
11 Dated: December 11, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

12
13 By:



Tuvia Korobkin
Attorney for Plaintiff