

Janelle Carney (#201570)

JANELLE CARNEY- ATTORNEY AT LAW, APC

14758 Pipeline Avenue, Suite E

Chino Hills, CA 91709

Phone: 909.521.9609

Fax: 909.393.0471

email: Janelle@JanelleCarneyLaw.com

Manny Starr, Esq. (Bar No. 319778)

manny@frontierlawcenter.com

Adam Rose (210880)

adam@frontierlawcenter.com

FRONTIER LAW CENTER

23901 Calabasas Road, #1084

Calabasas, CA 91302

Telephone: (818) 914-3433/ Fax: (818) 914-3433

Attorneys for Plaintiff, MARY WILKER

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

MARY WILKER, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

SAN RAFAEL OPERATING COMPANY,
LP, a Delaware Limited Partnership;
MARINER HEALTH CENTRAL, Inc., a
Delaware Corporation, and DOES 1-100,
inclusive,

Defendants.

CASE NO. CV0001580

CLASS ACTION

Judge Stephen Freccero

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Violation of Unfair Competition Law
2. Failure to Pay All Wages
3. Meal Period Violations
4. Waiting Time Penalty
5. Wage Statement Penalty
6. Rest Period Violations
7. PAGA Penalties

DEMAND FOR JURY TRIAL

Complaint filed 12/14/2023

1 Plaintiff, Mary Wilker, on behalf of herself and all others similarly situated, hereby
2 complains against San Rafael Operating Company, LP, a Delaware Limited Partnership; Mariner
3 Health Central Inc., a Delaware Corporation (collectively referred to as “Defendant”), and DOES 1
4 to 100, as follows:

5
6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
9 §§ 203, 210, 226, 226.7, 510, 512, 558, 1194, 1197.1, 1198, and 2698 et seq. The Plaintiff for
10 herself and all others similarly situated, brings an action for monetary damages for failure to pay
11 wages as well as for injunctive relief, declaratory relief and restitution for Defendant’s violations of
12 Business and Professions Code (B&PC) §17200, et seq., including full restitution of all
13 compensation retained by Defendant, as a result of its unlawful, fraudulent and unfair business
14 practices. Plaintiff seeks all available relief, including full damages, full restitution and/or
15 disgorgement of all revenues, earnings, profits, compensation and benefits retained by Defendant as
16 a result of its unlawful, unfair business practices.

17 **VENUE**

18 2. Venue as to the Defendant is proper in Marin County pursuant to California Code of
19 Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of herein
20 occurred in the County of Marin. Defendant either owns or maintain offices, transacts business, has
21 an agent or agents within the County of Marin, or otherwise is found within the County of Marin,
22 and Defendant is within the jurisdiction of this Court for purposes of service of process.

23 **PARTIES**

24 3. Mary Wilker is an individual over the age of eighteen (18). At all relevant times
25 herein, Plaintiff Wilker currently is a resident of Florida.

26 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
27 herein, Defendant San Rafael Operating Company, LP, a Delaware Limited Partnership, was based
28 in Marin County.

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and each of them listed herein are professional entities licensed to do business in
3 California.

4 6. Plaintiff is informed and believes and thereon alleges that at all relevant times each
5 Defendant was licensed to do business in the State of California, County of Marin with its principal
6 place of business in Marin County, California.

7 7. Further, Defendant is and was the employer of the Plaintiff and Plaintiff Class
8 during the Class Period. During the liability period, Defendant employed Plaintiff and similarly
9 situated non-exempt hourly employees and due to Defendant's uniform payroll practices, failed to
10 pay Plaintiff and Plaintiff Class for all time worked due to its requirement that Plaintiff and the
11 Class perform work off-the-clock, failure include all non-discretionary remuneration when
12 calculating the regular rate of pay and by such failure, underpaid employees their overtime and
13 failed to pay Plaintiff and Plaintiff class premiums for missed rest and meal periods at the regular
14 rate of pay, and failed to provide accurate wage statements. Further, Defendant underpaid overtime
15 and double time premium payments due to Defendant's failure to properly calculate the regular rate

16 8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to
17 100, control and operate business and establishments in locations within the State of California,
18 including, but not limited to, the County of Marin. Thus, each named Defendant and DOES 1 to
19 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as
20 hereinafter alleged.

21 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said
23 Defendant is sued under such fictitious names, and Plaintiff will amend pursuant to Code of Civil
24 Procedure section 474 when such true names and capacities are discovered. Plaintiff is informed
25 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
26 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
27 herein, and proximately caused Plaintiff and all others similarly situated to be subjected to the
28 unlawful employment practices, wrongs, injuries and damages complained of herein.

1 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

2 10. Plaintiff on behalf of herself and all others similarly situated, filed this cause of
3 action acting as a private attorney general.

4 11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
5 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
6 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
7 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
8 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
9 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
10 general public as remedies for any violations of B&PC §17200.

11 12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
12 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

13 a. A successful outcome in this action will result in the enforcement of
14 important rights by maintaining the integrity of entities that employ employees;

15 b. This action will result in a significant benefit by ceasing unlawful, unfair and
16 deceptive activity, and by causing the return of ill-gotten gains obtained by Defendant through their
17 failure to properly pay their employees;

18 c. Unless this action is prosecuted, the class members will not recover monies
19 wrongfully taken from them, and many employees and consumers would not be aware that they
20 were victimized by Defendant's wrongful acts and practices; and Code of Civil Procedure section
21 1021.5 applies for attorneys' fees..

22 **CLASS REPRESENTATIVE**

23 13. The class representative Plaintiff who worked in the position of non-exempt hourly
24 employee, while employed by Defendant within the State of California, is Mary Wilker.

25 **CLASS ACTION ALLEGATIONS**

26 14. Plaintiff brings this action on behalf of herself and all others similarly situated as a
27 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of
28 and defined as follows:

1 **Class Definition:**

2 All non-exempt hourly employees who worked for Defendant in California at least one (1)
3 day at any time from four (4) years preceding the filing of this Complaint through the date of the
4 class certification order.

5 **Class 1:**

6 All non-exempt hourly employees who worked for Defendant at least one (1) day in
7 California at any time from four (4) years preceding the filing of this Complaint through the date of
8 the class certification order, and who were not paid premium overtime pay for hours over eight (8)
9 in a day at the correct regular rate of pay. ("Overtime/ Regular Rate Class").

10 **Class 2:**

11 All non-exempt hourly employees who worked for Defendant at least one (1) day in
12 California at any time from four (4) years preceding the filing of this Complaint through the date of
13 the class certification order, and who were not provided legally-compliant meal periods ("Meal
14 Break Class").

15 **Sub-Class 1:**

16 All non-exempt hourly employees who worked for Defendant at least one (1) day in
17 California at any time from four (4) years preceding the filing of this Complaint through the date of
18 the class certification order, who were paid a missed meal period or missed rest payment in a week
19 that the employee also received a non-discretionary bonus or other type of pay along with their
20 regular wages. ("Meal/Rest Period Regular Rate Sub- Class").

21 **Class 3:**

22 All non-exempt hourly employees who worked for Defendant at least one (1) day in
23 California at any time from four (4) years preceding the filing of this Complaint through the date of
24 the class certification order, and who were not provided legally-compliant rest periods ("Rest Break
25 Class").

26 **Sub-Class 2:**

27 All non-exempt hourly employees who worked for Defendant at least one (1) day in
28 California at any time from four (4) years preceding the filing of this Complaint through the date of
the class certification order, who were required to remain on premises for their rest breaks. ("On-

Premises Rest Break Sub-Class”).

Class 4:

All non-exempt hourly employees who worked for Defendant at least one (1) day in California at any time from three (3) years preceding the filing of this Complaint through the date of the class certification order, who are no longer employed by Defendant and were not paid all their earned wages. (“Waiting Time Penalty Class”). (This is a derivative class for all classes and sub-classes).

Class 5:

All non-exempt hourly employees who worked for Defendant at least one (1) day in California at any time from one (1) year preceding the filing of this Complaint through the date of the class certification order who were provided a paystub (a.k.a. wage statement) from Defendant (“Pay Stub Class”). (This is a stand-alone and derivative class for all classes and sub-classes).

Class 6:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from four years from the date of filing through certification who were required to work off the clock. (minimum wage / off the clock class)

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time; however, it is estimated that the classes number greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

15. There are common questions of law and fact as to Plaintiff and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendant improperly retained, appropriated or deprived Plaintiff of the use of monies or sums to which Plaintiff was legally entitled;
- ii. Whether Defendant engaged in unfair business practices;
- iii. Whether Defendant, and each of them, were participants in the alleged unlawful conduct;
- iv. Whether Defendant’s conduct was willful or reckless;

- v. The effect upon and the extent of injuries suffered by Plaintiff and all others similarly situated and the appropriate amount of compensation;
- vi. The appropriate amount of monetary penalties allowed by Labor Code §§201, et. seq. and 226;
- vii. Whether Defendant violated Labor Code §226 and relevant IWC Wage Orders;
- viii. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and members of the Plaintiff class as required by Labor Code § 1174 and §7 of the IWC Order 5-2001 and its successors;
- ix. Whether Defendant willfully violated provisions of the California Labor Code.

16. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class member.

17. The nature of this action and the nature of laws available to the members of the classes identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one large employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named Plaintiff experienced, is representative of the class mentioned

1 herein and will establish the right of each of the members of the named class to recovery on the
2 causes of action alleged herein.

3 18. The prosecution of separate actions by the individual class members, even if
4 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
5 respect to the individual class members against Defendant herein; and which would establish
6 potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with
7 respect to individual class members which would, as a practical matter, be dispositive of the interest
8 of the other class members not parties to adjudications or which would substantially impair or
9 impede the ability of the class members to protect their interests. Further, the claims of the
10 individual members of the class are not sufficiently large to warrant vigorous individual
11 prosecution considering all of the concomitant costs and expenses attending thereto.

12 19. Plaintiff and all others similarly situated are entitled to the wages and other monies
13 unlawfully withheld. This action is brought for the benefit of the public.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of B&PC §17200, et seq.)**

16 20. Plaintiff re-alleges and incorporates by reference herein the allegations of all
17 preceding paragraphs as though fully set forth herein.

18 21. Beginning on an exact date unknown to Plaintiff, Defendant has engaged in a pattern
19 and practice of acts of unfair competition in violation of B&PC §17200, including the practices
20 alleged herein.

21 **FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)**

22 22. Plaintiff is informed and believes and thereon alleges, that at all times herein
23 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited by
24 California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered or
25 permitted Plaintiff and Plaintiff Class to work off the clock.

26 23. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and the
27 Class were required to perform work off-the-clock. Defendant failed to pay Plaintiff and the Class
28 for all time worked, including but not limited to straight time, and overtime. Plaintiff alleges that
Defendant would require Plaintiff and Plaintiff Class to clock out for meal breaks and continue

1 working.

2 **VIOLATION OF MEAL PERIOD PROVISIONS**

3 24. Defendant's improper meal policies are in violation of California law including, but
4 not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiff and the
5 members of the class are entitled to a half hour meal period for every five (5) hours of their shift
6 worked. Defendant violated the meal break provisions and did not provide Plaintiff and the class
7 with duty free meal periods. Plaintiff and the class were entitled to one (1) hour of pay for each
8 meal break violation at their regular rate of pay. Plaintiff believes and thereon alleges that
9 Defendant failed to pay Plaintiff and the putative class members missed meal period payments at
10 the regular rate. Further, Defendant required Plaintiff and the Class to clock out for meal breaks
11 whether or not they actually took a meal break.

12 25. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
13 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
14 the relevant class period.

15 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

16 26. Plaintiff and other members of the Rest Period Class are entitled to the benefits of
17 Labor Code § 226.7 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor
18 Code § 226.7 and Wage Order 5-2001, Plaintiff and the other members of the Rest Period Class
19 were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or
20 major fraction thereof, and one hour of additional pay for every shift a rest period was not provided
21 in conformance with this obligation.

22 27. Plaintiff is informed and believes, and thereon allege that Defendant consistently
23 compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than
24 four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3) rest
25 breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to provide
26 duty-free rest periods and off-site rest periods to Plaintiff and the class.

27 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

28 28. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
ongoing unfair business practices, Defendant, and each of them, fails to provide its employees with

1 proper and understandable itemized wage statement, as required by Labor Code § 226.

2 29. Plaintiff is informed, and believes, and thereon alleges, that Defendant, and each of
3 them, fail to provide each employee with an itemized statement which states the actual regular rate
4 paid, the actual total hours worked by the employee, the net wages earned, and all applicable hourly
5 rates in effect during the pay period and the corresponding number of hours worked at each hourly
6 rate by the employee.

7 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

8 30. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
9 ongoing unfair business practices, Defendant failed to provide all hourly employees all wages at the
10 time of their separation in violation of Labor Code § 200, et. seq. This is a derivative claim in that
11 all hourly employees who are no longer employed by Defendant who establish liability on any
12 claim alleged in this action are entitled to recover under Labor Code §203.

13 31. Labor Code § 200, et seq. provides that an employer is required to pay an employee
14 all wages (including accrued vacation) within twenty-four (24) hours of the employee's involuntary
15 separation from employment; within twenty-four (24) hours of his or her voluntary separation if the
16 employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the
17 employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

18 32. Plaintiff is informed and believes and thereon alleges that all employees who have
19 been separated from Defendant did not timely receive a final paycheck detailing the proper amount
20 of wages from Defendant in violation of Labor Code § 200, et. seq.

21 33. Pursuant to Labor Code § 200, et seq. employees that no longer work for Defendant,
22 and who were not timely paid, are entitled to one (1) day of pay in penalties for each day that he or
23 she was paid late, until payment was made, up to a maximum of thirty (30) days.

24 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

25 34. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
26 ongoing unfair business practice, Defendant's employees were and are employed and scheduled as
27 a matter of established company policy to work, and in fact, worked in excess of eight (8) hours in
28 a day. The hours worked by Defendant's employees is in excess of eight (8) hours per day, and in

1 excess of forty (40) hours per week without receiving the proper overtime premium. The
2 Defendants are in violation of Labor Code §§ 510 and 1194, and the relevant Industrial Welfare
3 Commission Orders 5-2001, et seq.

4 35. Under Labor Code §1194, an employee is not fully compensated for the unpaid
5 balance of their overtime compensation unless the employee is paid all unpaid compensation for the
6 regular hours and overtime hours worked during an overtime shift.

7 36. While Defendants' policy is to pay time-and-a-half for all hours worked in excess of
8 eight (8) hours per day, Defendants fail to pay members of the class proper premium overtime
9 premiums due to Defendant failing to properly calculate the regular rate of pay. The mathematical
10 result of this practice is that employees are underpaid their earned statutory overtime premium
11 wages. Defendant's mathematical scheme is in violation of the Labor Code. Defendant's
12 employees are not paid proper overtime compensation at the correct rate. The "regular rate" means
13 "the hourly rate actually paid for the normal, non-overtime workweek." (See *Walling v.*
14 *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the
15 hourly rate actually paid the employee for the normal, non-overtime workweek for which he is
16 employed.") (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining
17 the "regular rate" is defined as "the hourly rate actually paid for the normal, non-overtime
18 workweek.") (quotation omitted) (emphasis added); *Huntington Memorial Hosp. v. Superior Court*,
19 (2005) 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime
20 workweek); *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir. 2017) (To
21 determine the regular rate, "we must first determine what the parties agreed [the employee] is to be
22 paid in a normal, non-overtime workweek.") (emphasis added).) "Wage divided by hours equals
23 regular rate." (*Bay Ridge*, 334 U.S. at 461 (quotation omitted).) The employer may not "compute
24 the regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes."
25 (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all payments which the parties have
26 agreed shall be received regularly during the workweek, exclusive of overtime payments." (Id.)
27 The regular rate "is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties
28 have decided upon the amount of wages and the mode of payment the determination of the regular
rate becomes a matter of mathematical computation" (Id. at 244-45.) "The regular hourly rate

1 of pay of an employee is determined by dividing his total remuneration for employment (except
2 statutory exclusions) in any workweek by the total number of hours actually worked by him in that
3 workweek for which such compensation was paid." (29 C.F.R. § 778.109.)

4 37. Plaintiff believes and thereon alleges that Defendant fails to include all remuneration
5 into the calculation of the regular rate for overtime, meal and rest period premium payments,
6 including but not limited to, differentials, bonuses, and other pay.

7 38. Plaintiff and all others similarly situated identified herein were and are employed
8 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
9 hourly employees in excess of eight (8) hours per day for eight and one-half (8.5), nine (9), ten (10)
10 or twelve (12) hour shifts. Defendant employs and schedules all employees without providing daily
11 overtime compensation for such excess daily overtime hours worked in violation of Labor Code §§
12 510, 1194, 1198 and the relevant California Industrial Welfare Commission (IWC) orders. Pursuant
13 to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or
14 under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 5, as
15 amended, applies to Plaintiff and the hourly employees.

16 39. Defendants, and each of them, consistently administered a corporate policy
17 regarding, both staffing levels, duties and responsibilities of Defendants' employees, which
18 required that the entirety of the employees work overtime without proper premium overtime pay.
19 Further, the Plaintiff and the class are entitled to restitution of these wages obtained by Defendants,
20 and each of them.

21 40. This corporate policy and pattern of conduct is accomplished with the advance
22 knowledge and designed intent not to pay the employees at a premium rate for all overtime hours.
23 Further, the Plaintiff and the members of the class are entitled to restitution of these wages obtained
24 by Defendant, and each of them.

25 41. Further, the Plaintiff and the members of the classes are entitled to restitution of all
26 unpaid wages obtained by Defendants, and each of them. Plaintiff, and the class, may seek
27 restitution for unpaid wages under California Business & Professions Code §17200, *et seq.*
28 ("Section 17200"). Any business act or practice that violates the Labor Code through a failure to
pay wages is by definition an unfair business practice under §17200 under the unlawful prong.

1 Section 17200 provides an action to recover wages as restitution, even if such recovery might be
2 barred if brought pursuant to the Labor Code, if the failure to pay constitutes a business practice.
3 Defendants' failure to properly pay all wages, including straight time and the overtime premium at
4 the correct regular rate, constitutes an unfair business practice because it is a failure to timely pay
5 wages pursuant to Labor Code §204; Unpaid straight time wages and unpaid overtime wages are
6 recoverable as restitution under Section 17200 based on Defendants' subterfuge which constitutes
7 an unfair business practice that fails to pay earned wages in violation of the Labor Code.

8 Defendants have continuously concealed their subterfuge business practices, as herein alleged.

9 42. Plaintiff is informed and believes and thereon alleges that as part of Defendants'
10 ongoing unfair business practice, Defendant's California resident hourly employees were and are
11 employed and schedule as a matter of established company policy to work, and in fact, worked over
12 eight (8) hours a day. The hours worked by Defendants' hourly employees is in excess of eight (8)
13 hours per day, and in excess of forty (40) hours per pay period without receiving the proper straight
14 time or overtime compensation for such excess hours worked in violation of Labor Code §§ 203,
15 510 and 1194, and the relevant Industrial Welfare Commission order.

16 43. Plaintiff and all others similarly situated identified herein were and are employed
17 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
18 hourly employees in excess of eight (8) hours per day. Defendants employed and scheduled all
19 employees without providing overtime compensation for such excess daily overtime hours worked
20 in violation of Labor Code §§ 510, 1194, 1198 and the relevant California Industrial Welfare
21 Commission (IWC) orders, including daily and weekly overtime premiums, including the seventh
22 day premium. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
23 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
24 Wage Order No. 5, as amended, applies to Plaintiff. Plaintiff seeks restitution for all the
25 aforementioned violations.

26 44. Defendant, and each of them, have engaged in unfair business practices in California
27 by practicing, employing and utilizing the employment practices complained of herein.
28 Defendant's use of such practices constitutes an unfair business practice, unfair competition, and
provides an unfair advantage over Defendant's competitors. Plaintiff and the putative class seek

1 full restitution of said monies, as necessary and according to proof, to restore any and all monies
2 withheld and/or acquired by Defendant by means of the unfair business practices complained of
3 herein. Plaintiff seeks, on behalf of all current and former employees of Defendant, restitution of
4 said monies. Plaintiff further seeks, on behalf of the Plaintiff and the putative class, the
5 appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendant.
6 The restitution includes all wages withheld by Defendant as a result of the unfair business practices,
7 including interest thereon. Absent a statutory provision specifically governing the type of claim at
8 issue, the prejudgment interest rate is 10 percent.

9 45. Plaintiff is informed and believes and thereon alleges that at all times herein
10 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
11 by California B&PC §17200, thereby depriving their employees and the putative class the
12 minimum working condition, standards and conditions due to them under the California labor laws
13 and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff further
14 seeks an order requiring Defendant to identify by full name, telephone number, and last known
15 address employees who worked or still work for Defendant from four (4) years preceding the filing
16 of the Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant
17 to timely pay restitution to all current and former employees, including back wages, and interest.
18 The acts complained of herein occurred, at least in part, within the last four (4) years preceding the
19 filing of the original Complaint.

20 46. By and through its unfair, unlawful, and/or fraudulent business practices and acts
21 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
22 situated and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
23 guaranteed by law, all to their detriment.

24 47. Plaintiff, and all persons similarly situated, are entitled to and do seek such relief as
25 may be necessary to restore to them the money and property which Defendant has acquired, or of
26 which Plaintiff and class members have been deprived by means of the herein described unfair,
27 unlawful, and/or fraudulent business practices.

28 48. Plaintiff, and all persons similarly situated, and all persons in interest, are further

1 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful,
2 and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein
3 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

4 49. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
5 §1021.5 since this action is brought to vindicate important rights of a large class.

6 **SECOND CAUSE OF ACTION**

7 **RECOVERY OF UNPAID WAGES & PENALTIES**

8 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

9 **Against All Defendants**

10 50. Plaintiff re-alleges and incorporate by reference herein the allegations of all
11 preceding paragraphs as though fully set forth herein.

12 51. Plaintiff and all others similarly situated identified herein were and are employed
13 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
14 hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per pay
15 period, including shifts that last ten (10) hours or twelve (12) hours without daily overtime paid for
16 the hours worked in excess of eight (8) in a day at the correct regular rate. Labor Code § 204
17 establishes the fundamental right of all employees in the state of California to be paid the proper
18 amount of wages in a timely fashion for their work, including overtime.

19 52. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
20 class was underpaid due to Defendant's off-the-clock practice. Further, Plaintiff alleges that she
21 and the other hourly nonexempt employees that despite their classification as hourly nonexempt
22 employees, Defendant has willfully and wrongfully underpaid overtime premiums at the regular
23 rate in order to avoid payment of overtime wages and other benefits in violation of the Labor Code
24 and the orders issued by the IWC, thereby Defendant is able to reduce its overhead and operating
25 expenses and gain an unfair advantage over competing companies complying with state law.

26 53. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
27 class was under paid premium overtime compensation at a lower rate of pay than the regular rate
28 when Defendant paid overtime. The "regular rate" means "the hourly rate actually paid for the
normal, non-overtime workweek." (Id. (emphasis added); see also *Walling v. Youngerman-*

1 *Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the hourly rate
2 actually paid the employee for the normal, non-overtime workweek for which he is employed.")
3 (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining the "regular
4 rate" is defined as "the hourly rate actually paid for the normal, non-overtime workweek.")
5 (quotation omitted) (emphasis added); *Huntington Memorial Hosp. v. Superior Court*, (2005) 131
6 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime workweek); *Brunozzi*
7 *v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir. 2017) (To determine the regular rate,
8 "we must first determine what the parties agreed [the employee] is to be paid in a normal, non-
9 overtime workweek.") (emphasis added).) "Wage divided by hours equals regular rate." (Bay
10 Ridge, 334 U.S. at 461 (quotation omitted).) The employer may not "compute the regular rate in a
11 wholly unrealistic and artificial manner so as to negate the statutory purposes." (*Walling*, 325 U.S.
12 at 424.) The regular rate "must reflect all payments which the parties have agreed shall be received
13 regularly during the workweek, exclusive of overtime payments." (Id.) The regular rate "is not an
14 arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the
15 amount of wages and the mode of payment the determination of the regular rate becomes a matter
16 of mathematical computation" (Id. at 244-45.) "The regular hourly rate of pay of an employee
17 is determined by dividing his total remuneration for employment (except statutory exclusions) in
18 any workweek by the total number of hours actually worked by him in that workweek for which
19 such compensation was paid." (29 C.F.R. § 778.109.)

20 54. Plaintiff is informed and believes and thereon alleges that Defendant consistently
21 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
22 members of the classes which required the entirety of all classes to work without overtime or
23 minimum wages, by working off-the-clock. Thus, Plaintiff and all others similarly situated
24 routinely, regularly and customarily performed overtime work. Accordingly, Plaintiff and all
25 others similarly situated are entitled to overtime compensation under California law.

26 55. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for
27 overtime wages directly against the employer without first filing a claim with the Division of Labor
28 Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with interest
thereon, penalties, attorneys' fees and costs.

1 56. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons
2 similarly situated wages when due as required by Labor Code § 204.

3 57. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
4 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
5 Wage Order No. 5, as amended, applies to Plaintiff and the class.

6 58. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
7 that Defendant has treated Plaintiff and all other similarly situated hourly employees as hourly non-
8 exempt employees. Despite this classification, Defendants have willfully and wrongfully underpaid
9 overtime premiums at the regular rate in order to avoid payment of overtime wages and other
10 benefits in violation of the Labor Code and the orders issued by the IWC, thereby Defendant is able
11 to reduce its overhead and operating expenses and gain an unfair advantage over competing
12 companies complying with state law.

13 59. Plaintiff is informed and believes and thereon alleges that Defendant consistently
14 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
15 members of the classes which required the entirety of all classes to work overtime without proper
16 premium pay at the correct regular rate. This included a uniform corporate policy and practice of
17 allocating straight time only hourly rate for all hours worked in a day in excess of eight (8) hours
18 and for carrying out a policy that fails to pay overtime premiums. This corporate policy and pattern
19 of conduct was/is accomplished with the advance knowledge and design of all Defendants herein.
20 Thus, Plaintiff and all others similarly situated routinely, regularly and customarily performed
21 overtime work. Accordingly, Plaintiff and all others similarly situated are entitled to overtime
22 compensation under California law.

23 60. Defendants have willfully failed to pay the earned and unpaid wages of such
24 individuals, including, but not limited to premium pay at the correct rate, and other wages earned
25 and remaining uncompensated according to amendment, or proof.

26 61. The pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to
28 recovery by Plaintiff and all others similarly situated, in a civil action, for the unpaid balance of the
full amount of the all wages owing, including the proper calculation of the regular rate, including

1 interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit according to the
2 mandate of Labor Code § 1194, et. seq.

3 62. Likewise, Defendant has a pattern, practice and uniform administration of corporate
4 policy regarding failure to comply with the required provisions of Labor Code § 226.7, in failing to
5 pay Plaintiff and the class the meal and rest break violation payment at the regular rate.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL BREAKS**

8 63. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
9 paragraphs above.

10 64. Labor Code §226.7 requires an employer to pay an additional hour of compensation
11 for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to
12 provide legally compliant meals in addition to impeding, discouraging and/or dissuading employees
13 from taking legally compliant meal periods. Employees are entitled to a meal period of at least
14 thirty (30) minutes per five (5) hour work period. Plaintiff and the class consistently worked over
15 five (5) hour shifts without meal periods due to Defendant's policy of discouraging, dissuading
16 and/or impeding Plaintiff and the class from taking meal periods. Plaintiff and the class were
17 scheduled by Defendant in such a way that they were not able to take compliant meal breaks and
18 complete their tasks for the day. Pursuant to the Code, Plaintiff and the class are entitled to a meal
19 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

20 65. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
21 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
22 the relevant class period. Further, Defendant had a policy and practice of automatically deducting
23 thirty (30) minutes of meal period time regardless if the employee took a meal.

24 66. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal
25 to one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be
26 proven at trial.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**
3 **WAITING TIME PENALTIES (Labor Code §§201-203)**

4 67. Labor Code §201 states that an employer is required to provide an employee who is
5 terminated all unpaid wages immediately upon termination.

6 68. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay
7 Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code
8 §201.

9 69. Labor Code §202 states, in pertinent part, that an employer is required to provide an
10 employee who quits his or her employment all wages due and owing not later than 72 hours
11 thereafter.

12 70. Plaintiff is informed and believes and thereon alleges that Defendant and each of
13 them failed to pay Plaintiff all wages due and owing upon voluntary resignation, thereby violating
14 Labor Code §202.

15 71. Labor Code §203 states that if an employer willfully fails to pay an employee wages
16 according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a
17 maximum of 30 days.

18 72. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor Code
19 §203. As such, Defendant is required to pay Plaintiff a 30-day wage penalty in addition to all
20 unpaid wages as described herein.

21 73. Accordingly, Plaintiff and the Waiting Time Penalty Class members are entitled to
22 attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
25 **PURSUANT TO LABOR CODE §226**
26 **Against All Defendants**

27 74. Plaintiff re-alleges and incorporates by reference herein the allegations of all
28 preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. Subsection (e) provides: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

75. During the Class Period, Defendant knowingly and intentionally failed to provide Plaintiff and the class with timely and accurate wage statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing that Class Member, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by that Class Member. Further, the pay stubs were inaccurate due to the rounded time entries instead of actual time entries. Additionally, Plaintiff alleges that Defendant's pay stubs failed to list all hours worked at each rate paid during the pay period.

76. Defendant thus required Plaintiff and the class to work under conditions prohibited by order of the Industrial Welfare Commission, in violation of those orders.

77. The Class Members, including Plaintiff, suffered injury as a result of Defendants' knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage and hour statements required by law, as Plaintiff and the class were unable to tell from looking at their pay stubs if they were being paid properly.

78. Based on Defendants' conduct as alleged herein, Defendants are liable for actual damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's fees and costs.

////

////

////

SIXTH CAUSE OF ACTION
FAILURE TO ALLOW REST BREAKS PURSUANT TO
LABOR CODE §226.7
(Against All Defendants)

79. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the aforementioned allegations.

80. The Plaintiff alleges that Defendant has violated Labor Code §§226.7 & the applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Hourly non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt employees from taking a duty-free rest period break for any work period that is greater than two (2) hours up to four (4) hours. Plaintiff and the class consistently worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking said breaks off-premises.

81. Further, even if rest premiums were paid, they were not paid at the correct regular rate. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break violation, in a sum to be proven at trial.

SEVENTH CAUSE OF ACTION
CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699

82. Plaintiff re alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

83. Labor Code §§2698, 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf

1 of all other current or former employees.

2 84. Whenever the LWDA, or any of its departments, divisions, commissions,
3 boards agencies or employees, has discretion to assess a civil penalty, a court in a civil
4 action is authorized to exercise the same discretion, subject to the same limitations and
5 conditions to assess a civil penalty.

6 85. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
7 employees" as defined by Labor Code §2699, in that they are all current or former
8 employees of Defendants, and one or more of the alleged violations was committed against
9 them.

10 86. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on
11 or about November 17, 2023, via mandatory online filing through the State of California
12 LWDA/ Department of Industrial Relations website with a copy to the employer via
13 certified mail, of the specific provisions of this code alleged to have been violated, including
14 listing some facts and some theories to support the alleged violations as required by Labor
15 Code §2699.3; A true and correct copy of the letter is attached hereto as Exhibit 1. Plaintiff
16 alleges that she has exhausted all administrative remedies and filed the herein complaint 65
17 days after mailing said original notice. At the date of filing this Complaint, the LWDA has
18 not responded with any intention to investigate. As such, Plaintiff has exhausted her
19 administrative requirements pursuant to Labor Code §2699.3(a)(1) and (2) (A-C).

20 87. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf
21 of themselves and other current or former employees, to bring a civil action to recover civil
22 penalties pursuant to the procedures specified in Labor Code § 2699.3.

23 88. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
24 employees are entitled to recover civil penalties for each of the Defendant's violations of
25 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during
the applicable limitations period in the following amounts:

26 a. For violations of California Labor Code § 204, one hundred dollars
27 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
28 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount

1 unlawfully withheld from each aggrieved employee for each subsequent, willful or
2 intentional violation (penalty amounts established by California Labor Code § 210).

3 b. For violations of Labor Code § 226(a), two hundred fifty dollars
4 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
5 employee for each subsequent violation (penalty amounts established by Labor Code §
6 226.3).

7 c. For violations of Labor Code § 512, fifty dollars (\$50.00) for each
8 aggrieved employee for each initial violation for pay period for which the employee was
9 underpaid in addition to an amount sufficient to recover unpaid wages and one hundred
10 dollars (\$100.00) for each underpaid employee for each pay period for which the
11 employee was underpaid (penalty amounts established by Labor Code § 558).

12 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00)
13 for each aggrieved employee for each initial and intentional violation per pay period
14 (regardless of whether the initial violations were intentionally committed) and two hundred
15 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay
16 period (regardless of whether the initial violations were intentionally committed), in
17 addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to
18 Labor Code § 1194.2, and applicable penalties imposed pursuant to Labor Code § 203.

19 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
21 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
22 each subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).

23 f. Penalties under Code of Regulations, Title 8 §11070 or other
24 applicable Code of Regulations in the amount of \$50 for each aggrieved employee per pay
25 period for the initial violation, and \$100 for each aggrieved employee per pay period for
26 each subsequent violation;

27 g. Penalties under Labor Code §210, in addition to and entirely
28 independent and apart from other penalty provided in the Labor Code, in the amount of
\$100 for each aggrieved employee per pay period for each violation, and \$200 for each

1 aggrieved employee per pay period for each subsequent violation, plus 25% of the wage
2 wrongly withheld;

3 h. Penalties under Labor Code §256, in addition to and entirely
4 independent and apart from other penalty provided in the Labor Code, including Labor
5 Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not
6 paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5,
7 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each
8 day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30)
9 days;

10 i. Penalties under Labor Code §558, in addition to and entirely
11 independent and apart from other penalty provided in the Labor Code, in the amount of
12 \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee
13 was underpaid, and \$100 for each subsequent violation for each underpaid employee for
14 each pay period for which the employee was underpaid pursuant to Labor Code §558
provided to the affected employees;

15 j. Penalties under Labor Code §226.3, in addition to and entirely
16 independent and apart from other penalty provided in the Labor Code, in the amount of
17 \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each
18 aggrieved employee per pay period for each subsequent violation;

19 k. Any and all additional penalties and sums as provided by the Labor
20 Code and/or other statutes.

21 l. Penalties under Labor Code section 210 for the weekly pay
22 violations.

23 89. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are
24 entitled to an award of civil penalties, reasonable attorney's fees and costs in connection
25 with their claims for civil penalties.

26 /////

27 /////

28 /////

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays:

4 1. That the Court determine this action may be maintained as a class action;

5 **As to the First Cause of Action:**

6 2. For an order preliminarily and permanently enjoining Defendants from engaging in
7 the practices challenged herein;

8 3. An order for full restitution of all monies, as necessary and according to proof, to
9 restore any and all monies withheld by the Defendants by means of the unfair practice complained
10 of herein. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200,
11 et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or
12 retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

13 4. For an order finding and declaring that Defendants' acts and practices as challenged
14 herein are unlawful, and unfair and/or fraudulent;

15 5. For an accounting, under administration of Plaintiff and subject to Court Review, to
16 determine the amount to be returned by Defendants and the amounts to be refunded to members
17 who are or were not paid all their wages due to Defendants' unfair business practices;

18 6. For the creation of an administrative process wherein each injured current and
19 former employee receives his or her back wages in the form of overtime pay or alternatively that
20 each current or former eligible employee may submit a claim in order to receive his/her money;

21 7. For an order requiring Defendants to make full restitution and payment pursuant to
22 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
23 510, and 1194;

24 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
25 appropriate declaratory and equitable relief;

26 9. For pre-judgment interest to the extent permitted by law;

27 10. For pre-judgment interest to the extent permitted by law and the California
28 Constitution;

1 11. For an order requiring Defendants to identify, by name, address and telephone
2 number of each person who worked as an hourly non-exempt employee for Defendants from four
3 (4) years before filing of the original complaint in this action through the time of judgment;

4 **As to the Second Cause of Action:**

5 12. For damages according to proof, as set forth in Labor Code §§ 510, 1194, and
6 1194.2, et. seq., (and the applicable California Industrial Welfare Commission wage orders)
7 regarding wages due and owing.

8 13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil
9 Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for reasonable
10 attorneys' fees;

11 14. For recovery of the unpaid balance of the full amount of unpaid minimum wage or
12 overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, and
13 1198 due and owing, according to proof;

14 15. For liquidated damages in an amount equal to the wages unlawfully unpaid and
15 interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor Code
16 §1194.2(a);

17 16. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
18 and CC §3287;

19 17. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5
20 and/or Labor Code §1194(a);

21 **As to the Third Cause of Action:**

22 18. One (1) hour of pay at each of the employees' regular rate of compensation for each
23 workday that a meal break was not provided, impeded, discouraged and/or dissuaded and/or correct
24 pay for missed meal premiums at the correct regular rate;

25 **As to the Fourth Cause of Action:**

26 19. For waiting time penalties for all former employees not timely paid their last pay
27 check, including vacation pay;

28 20. For reasonable attorneys' fees and costs;

1 **As to the Fifth Cause of Action:**

2 21. For recovery as authorized by Labor Code §226(e);

3 22. For an award of costs and reasonable attorneys' fees pursuant to Labor Code§226(e)
4 and/or §226(g);

5 **As to the Sixth Cause of Action:**

6 23. One (1) hour of pay at each of the employees' regular rate of compensation for each
7 workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or
8 dissuaded.

9 **As to the Seventh Cause of Action:**

10 24. On behalf of all current and former employees, for all civil penalties authorized by
11 Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor
12 Code §1197.1 for former or current employees who are due wage payments;

13 25. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
14 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period
15 for each subsequent violation;

16 26. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same
17 rate, for each day that an aggrieved employee was paid late, at the time of termination, until
18 payment was/is made, up to a maximum of thirty (30) days;

19 27. For civil penalties, pursuant to Labor Code § 558 as follows:

20 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
21 each pay period for which the employee was underpaid;

22 (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was underpaid;

24 28. For civil penalties under Labor Code §210, in addition to and entirely independent
25 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
26 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
27 for each subsequent violation, plus 25% of the wage wrongly withheld;

28 29. For civil penalties under Labor Code §2699(f), in addition to and entirely

1 independent and apart from other penalty provided in the Labor Code and for Labor Code
2 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
3 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
4 subsequent violation.

5 **As to All Causes of Action:**

6 30. For such other and further relief as this Court may deem just and proper.

7 Dated: January 13, 2024

JANELLE CARNEY - ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

9 By:



Janelle Carney, Esq.
Attorneys for Plaintiff, Mary Wilker

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

San Rafael Operating Company, LP
45 Professional Center Parkway
San Rafael, CA 94903

Mariner Health Care
3050 Montrose Ave.
La Crescenta, CA 91214

Subject: *Wilker v. San Rafael Operating Company, LP*

Dear Representative:

This office along with Frontier Law Center represents Mary Wilker in connection with Labor Code violation claims related to employment with San Rafael Operating Co., LP, regarding her employment at Pine Ridge Care and Rehabilitation Center (hereinafter collectively referred to as "Pine Ridge").

Ms. Wilker intends to seek PAGA penalties on behalf of herself and all other non-exempt employees of Pine Ridge in California who were subject to any of the Labor Code violations during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter.

Unpaid Wages (Off the Clock)

Labor Code sections 510 and 1194 and the applicable Wage Order, which is Wage Order 5, require an employer to pay 1.5 times an employee's regular rate for all hours over eight. Here, Pine Ridge required Ms. Wilker and the Aggrieved Employees to work off the clock. This led to underpayment of wages, as Ms. Wilker and the Aggrieved Employees were told to clock for meal breaks and continue working.

Ms. Wilker alleges that Pine Ridge fails to include all non-discretionary remuneration when calculating the regular rate of pay and by such failure, underpaid employees their overtime. This practice also resulted in underpayments of employees' missed meal and/or rest period premiums. Ms. Wilker is entitled to seek LC § 226.7, 558, and 2699 penalties accordingly.

Ms. Wilker and the Aggrieved Employees should have received overtime pay for work they performed off the clock. As a result, the PAGA penalties in Labor Code sections 558, 1194.2 and 1197.1 apply.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order 5-01 provide that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Ms. Wilker and the Aggrieved Employees could not take compliant meal periods; Meal periods were short, late, or missed altogether. Ms. Wilker was required to clock out for a meal break without actually taking a meal break, thus she should have received premium pay for each missed break. Nonetheless, no premium pay was paid, and as a result PAGA penalties apply.

Ms. Wilker is entitled to penalties in LC § 558 and 2699, et seq.

Rest Break Violations

The applicable Wage Order 5-01 requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided. Further, an employer may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute

rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, Ms. Wilker and the Aggrieved Employees were not provided with compliant rest breaks due to lack of staffing and/or relief coverage. Further, Ms. Wilker and the Aggrieved Employees were required to remain on premises and are continually interrupted and called back to work without receiving their off-duty rest periods.

Wage Statement Violations

Pine Ridge's paystubs do not reflect all the hours worked due to the off the clock issues mentioned supra, the paystubs are not compliant for failing to list all hours worked since the paystubs omit the off the clock work.

The paystubs do not accurately reflect all the hours worked, due to the fact numerous hours of work are missing.

Ms. Wilker and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of...(\$250) per employee per violation in an initial citation and...(\$1,000) per employee for each violation in a subsequent citation, for...fail[ing] to keep the records required in subdivision (a) of Section 226."

Waiting Time Penalties

The unpaid overtime wages, meal and rest period premium pay, all described above were still due when employees stopped working at Pine Ridge. Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Pine Ridge had an obligation to pay waiting time penalties, but intentionally failed to do so and did not pay waiting time penalties. Thus, PAGA penalties apply.

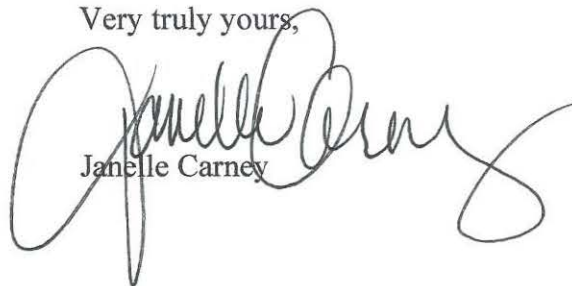
Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Wilker becomes aware of additional compensation owed or losses incurred by Ms. Wilker or by any other aggrieved employee, Ms. Wilker expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Ms. Wilker intends to pursue her claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other

aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Janelle Carney". The signature is fluid and cursive, with a large loop at the end.

Janelle Carney

JC/jw
Cc: Frontier Law Center