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Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiff,
JUANA CONSUEGRA HERNANDEZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

JUANA CONSUEGRA HERNANDEZ, as an
“aggrieved employee” on behalf of herself and
other similarly situated “aggrieved employees”
under the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

COMMERCIAL MAINTENANCE
SERVICES, INC.; SEA CREST FACILITIES
SERVICES LLC; SEA CREST
COMMERCIAL SERVICES, LLC; SEA
CREST SERVICES, INC.; and DOES 1 to 25,
inclusive,

Defendants.

Case No. 30-2024-01389290-CU-OE-CXC

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Juana Consuegra Hernandez (hereafter “Plaintiff”), on behalf of herself, the State
2 of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”),
7 against Defendants COMMERCIAL MAINTENANCE SERVICES, INC., SEA CREST
8 FACILITIES SERVICES LLC, SEA CREST COMMERCIAL SERVICES, LLC, SEA CREST
9 SERVICES, INC., and DOES 1 to 25, inclusive (collectively “SEA CREST” or “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and
12 other related relief. These claims are based on Defendants’ failures to: 1) pay all wages, including
13 minimum, regular, overtime, and doubletime wages earned for all hours worked at the correct
14 rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu thereof;
15 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof;
16 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
17 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
18 employment; and 8) maintain accurate employment records. Accordingly, Plaintiff now seeks to
19 recover civil penalties and related relief through this representative action.

20 **JURISDICTION AND VENUE**

21 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
22 the County of Orange in this judicial district because Defendants COMMERCIAL
23 MAINTENANCE SERVICES, INC., SEA CREST FACILITIES SERVICES LLC, SEA CREST
24 COMMERCIAL SERVICES, LLC, SEA CREST SERVICES, INC., and DOES 1 to 25,
25 inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities
26 arise therein, and because the work that was performed by Plaintiff and the Aggrieved Employees
27 in the County of Orange is the subject of this action. Moreover, the aggregate claims of Plaintiff
28 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

THE PARTIES

4. Plaintiff Juana Consuegra Hernandez is resident of Santa Ana, California.

5. Defendant COMMERCIAL MAINTENANCE SERVICES, INC. is a corporation organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

6. Defendant SEA CREST FACILITIES SERVICES LLC is a limited liability company organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

7. Defendant SEA CREST COMMERCIAL SERVICES, LLC is a limited liability company organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

8. Defendant SEA CREST SERVICES, INC. is a corporation organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

10. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as hourly, nonexempt employees, during the period beginning one year before the Plaintiff's notice of January 20, 2024 to the California Labor and Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

11. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the

1 other Defendants.

2 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
3 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
4 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
5 Employees in accordance with applicable California labor laws as alleged herein.

6 13. Plaintiff is informed and believes and thereon alleges that each and every one of
7 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
8 each acting as agents and/or employees, and/or under the direction and control of each of the other
9 defendants, and that said acts and failures to act were within the course and scope of said agency,
10 employment, and/or direction and control.

11 **FACTUAL ALLEGATIONS**

12 14. IWC Wage Order 4-2001 (“the Wage Order”) applies to “all persons employed in
13 professional, technical, clerical, mechanical, and similar occupations whether paid on a time,
14 piece rate, commission, or other basis[.]” § 1. The Wage Order defines “Professional, Technical,
15 Clerical, Mechanical, and Similar Occupations” to include: “...porters and cleaners...and other
16 related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and
17 kindred occupations.” *Id.*, § 2(O). At all relevant times during the applicable limitations period,
18 Defendants were engaged in providing janitorial services and employed Plaintiff and the other
19 Aggrieved Employees as cleaners/janitors. Accordingly, Plaintiff and the Aggrieved Employees
20 are entitled to the protections afforded by the Wage Order.

21 15. Plaintiff first started working for Defendants in or around 2014 as a janitor at the
22 Glenair warehouse. Plaintiff remained employed by Defendants in this capacity until late 2019.
23 Plaintiff also worked for Defendants from approximately March 2022 to July 2022 as a janitor to
24 work at Emerald Court Apartment Homes located at 21141 Canada Rd in Lake Forest,
25 California. Defendants once again employed Plaintiff on or around August 30, 2023 as a janitor
26 to work at the Metropolis Apartments located at 2100 Sullivan Ave. in Irvine, California.
27 Plaintiff generally worked Tuesday to Friday from approximately 6:00 a.m. to 2:30 p.m. or later.
28 Plaintiff’s employment ended on or around December 12, 2023.

1 16. At all relevant times, SEA CREST issued payments to Plaintiff and all of the other
2 Aggrieved Employees on a bi-weekly basis. Plaintiff's latest rate of pay was \$16.00 per hour.

3 17. SEA CREST failed to pay Plaintiff and the other Aggrieved Employees for all time
4 worked or subject to its control. Plaintiff and the other Aggrieved Employees consistently worked
5 "off the clock" in that the company had a policy and practice of rounding down work hours and
6 "time shaving" which led to Lopez and others not being paid for all hours worked, which would
7 include the minimum wage. Moreover, and to the extent that Plaintiff and others worked through
8 their meal periods while "off the clock", they were not compensated for all hours worked, which
9 would be akin to a minimum wage violation. Finally, SEA CREST management and building
10 supervisors communicated with Plaintiff and the others on their personal phones to provide them
11 with their job assignments and/or discuss work-related issues.

12 18. Due to the above "off the clock" violations, SEA CREST failed to pay Plaintiff
13 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees'
14 actual work hours, which included the "off the clock" work as described above, entitled them to
15 overtime, however, it was not company policy to keep accurate track of all hours worked and to
16 pay employees the accurate amount of overtime, especially since the "off the clock" work was
17 not factored into the equation. Furthermore, any incentive payments and/or bonus payments were
18 not factored into employees' regular rate of pay for purposes of deciphering the correct overtime
19 rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct
20 meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
21 858, 863.

22 19. SEA CREST failed to provide all compliant meal periods and authorize and permit
23 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
24 Plaintiff and the other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
25 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute
26 rest periods for every four hours or major fraction thereof worked. Due to the workload, Plaintiff
27 and the Aggrieved Employees would not be able to take timely, uninterrupted meal periods before
28 the 5th hour worked. For example, when Plaintiff tried to take her meal periods, the building

1 supervisor would interrupt her with work related questions. It is important to note that Plaintiff
2 was instructed to take her breaks in the storage room, where there was no suitable seating.
3 Similarly, Plaintiff and the other Aggrieved Employees were not able to take their 10-minute rest
4 breaks due to the work load. Throughout her employment tenure, Plaintiff never took rest breaks.
5 Rather, her rest break was combined with her meal period. As such, the culture as well as the
6 policies and procedures of SEA CREST did not lend itself to the employees receiving consistent
7 and timely statutory rest breaks and meal breaks wherein they were relieved of all work duties.
8 On information and belief, SEA CREST did not provide premium wages for these meal and rest
9 break violations; if SEA CREST did provide premium wages, they were not paid at the correct
10 rate, as explained above.

11 20. SEA CREST failed to reimburse Plaintiff and the other Aggrieved Employees for
12 business expenses they incurred in direct consequence of the discharge of their duties. SEA
13 CREST required Plaintiff and the other Aggrieved Employees to use their own personal cell
14 phones to communicate with management concerning work matters. SEA CREST also required
15 Plaintiff and the other Aggrieved Employees to purchase and use some of their own cleaning
16 supplies to perform their work. However, SEA CREST did not provide Plaintiff and the others
17 with these items and did not reimburse Plaintiff and the other Aggrieved Employees for these
18 supplies and mobile phone expenses. Accordingly, SEA CREST was in violation of California
19 Labor Code sections 2800 and 2802.

20 21. SEA CREST failed to pay its employees all wages due to them within any time
21 period specified by California Labor Code section 204, including the minimum wages and
22 overtime as described above as well as meal/rest break premiums.

23 22. SEA CREST did not provide Plaintiff and the other Aggrieved Employees
24 accurate, itemized wage statements. Wage statements must include all hours worked, overtime
25 hours worked, all applicable hourly rates, the correct legal name and correct address of employer
26 entity, gross wages earned, all deductions, net wages earned, reimbursement for business
27 expenses, the correct start and end of the applicable pay period, the employee ID numbers or
28 social security numbers, among other items. Labor Code § 226(a)(2). SEA CREST issued wage

1 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
2 number of hours worked at each hourly rate because of SEA CREST's failure to properly pay
3 wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). SEA CREST's failure to
4 maintain accurate records as to the hours worked daily by employees also constitutes a violation
5 of Labor Code section 1174(d).

6 23. SEA CREST unlawfully deducted wages belonging to Plaintiff and all of the other
7 Aggrieved Employees, for cell phones, among others in violation of Labor Code section 221.

8 24. Finally, because SEA CREST did not properly pay all wages earned as explained
9 herein, SEA CREST also failed to pay final wages owed to Plaintiff and the other Aggrieved
10 Employees in violation of Labor Code section 203. These earned but unpaid wages include
11 minimum wages and compensation for all hours worked, overtime compensation, premium pay
12 for missed meal and rest breaks, and business expense reimbursement, among others.

13 25. Accordingly, Plaintiff now seeks civil penalties on behalf of herself and the
14 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
15 the Wage Order.

16 **FIRST (AND ONLY) CAUSE OF ACTION**

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698, *et seq.*)**

19 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
20 **Defendants)**

21 26. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 27. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
23 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

24 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
25 **THE CORRECT RATES OF PAY**

26 28. Section 2(K) of the Wage Order defines "hours worked" as "the time during which
27 an employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so."

29. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or

over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

30. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

31. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

32. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

33. Labor Code section 1197 makes it unlawful for an employer to pay an employee

1 less than the minimum wage required under the applicable Wage Order for all hours worked
2 during a payroll period.

3 34. Labor Code section 1198 makes it unlawful for an employer to employ an
4 employee under conditions that violate the Wage Order.

5 35. In conjunction, these provisions of the Labor Code require employers to pay non-
6 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
7 worked, including unrecorded hours when the employer knew or reasonably should have known
8 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
9 Cal.4th 575, 585.)

10 36. At all relevant times during the applicable limitations period, Defendants failed to
11 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
12 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

13 37. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
16 required by California law.

17 **B. FAILURE TO PROVIDE MEAL PERIODS**

18 38. In relevant part, California Labor Code § 1198 states:

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

23 39. In relevant part, In relevant part, California Labor Code § 512 states:

24 An employer shall not employ an employee for a work period of
25 more than five hours per day without providing the employee with
26 a meal period of not less than 30 minutes, except that if the total
27 work period per day of the employee is no more than six hours, the
28 meal period may be waived by mutual consent of both the
29 employer and employee.

30 An employer shall not employ an employee for a work period of
31 more than 10 hours per day without providing the employee with
32 a second meal period of not less than 30 minutes, except that if the
33 total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

40. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

41. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

1 42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
2 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
3 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
4 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

5 43. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
6 with all required timely 30-minute meal periods free from any work duties in accordance with the
7 Wage Order.

8 44. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
9 Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
10 premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
11 Employees with timely meal periods.

12 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times
13 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
14 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
15 meal periods required by California law.

16 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

17 46. In relevant part, California Labor Code § 1198 states:

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

21 47. In relevant part, Section 12 of the Wage Order states:

22 Rest Periods:

23 (A) Every employer shall authorize and permit all employees to take
24 rest periods, which insofar as practicable shall be in the middle of
25 each work period. The authorized rest period time shall be based
26 on the total hours worked daily at the rate of ten (10) minutes net
27 rest time per four (4) hours or major fraction thereof. However, a
28 rest period need not be authorized for employees whose total daily
 work time is less than three and one-half (3 ½) hours. Authorized
 rest period time shall be counted as hours worked for which there
 shall be no deduction from wages.

1 (B) If an employer fails to provide an employee a rest period in
2 accordance with the applicable provisions of this order, the
3 employer shall pay the employee one (1) hour of pay at the
4 employee's regular rate of compensation for each workday
that the rest period is not provided.

5 48. In relevant part, California Labor Code § 226.7 states:

6 (b) An employer shall not require an employee to work during
7 a meal or rest period mandated pursuant to an applicable
8 statute, or applicable regulation, standard, or order of the
9 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

10 (c) If an employer fails to provide an employee a meal period
11 or rest period in accordance with a state law, including, but
12 not limited to, an applicable statute or applicable
13 regulation, standard, or order of the Industrial Welfare
14 Commission, the Occupational Safety and Health
15 Standards Board, or the Division of Occupational Safety
16 and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

17 49. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
18 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
19 period of work, or major fraction thereof.

20 50. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
21 Employees to take all 10-minute rest periods free from any work duties in accordance with the
22 Wage Order.

23 51. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
24 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
25 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
26 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

27 52. At all relevant times, due to high workload, Defendants failed to authorize and
28 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every

1 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
2 period protections of the Wage Order from the California Division of Labor Standards
3 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
4 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
5 periods every four hours worked or major fraction thereof.

6 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times
7 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
8 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
9 Employees to take all rest breaks required by California law.

10 **D. FAILURE TO INDEMNIFY**

11 54. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
12 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
13 consequence of the discharge of his or her duties.”

14 55. Labor Code section 1198 prohibits employers from employing their employees
15 under conditions prohibited by the Wage Order.

16 56. At all relevant times during the applicable limitations period, as a condition for
17 employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain
18 business expenses. These costs include, but are not limited to, use of personal cell phones to
19 communicate with office staff concerning work matters and purchasing cleaning supplies.
20 However, SEA CREST did not reimburse Plaintiff and the others for these business expenses.

21 57. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
22 for expenditures incurred as a direct consequence of discharging their duties in violation of
23 California Labor Code sections 2800 and 2802.

24 58. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
25 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants’
26 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
27 incurred during the course of performing their duties.

28 ///

1 **E. UNLAWFUL DEDUCTIONS**

2 59. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”

4 60. At all times during the relevant time period, Defendants unlawfully deducted
5 wages from the wages earned by Plaintiff for cell phones, among others, in violation of Labor
6 Code § 221.

7 **F. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

9 61. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
10 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
11 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
12 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
13 each hourly rate by the employee.

14 62. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
15 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
16 the employer fails to provide accurate and complete information as required by California Labor
17 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
18 alone one or more of the following:

19 A. The amount of the gross wages or net wages paid to the employee during
20 the pay period or any of the other information required to be provided on the itemized wage
21 statement pursuant to California Labor Code § 226(a);

22 B. Which deductions the employer made from gross wages to determine the
23 net wages paid to the employee during the pay period;

24 C. The name and address of the employer and, if the employer is a farm labor
25 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
26 and address of the legal entity that secured the services of the employer during the pay period;

27 D. The name of the employee and only the last four digits of his or his social
28 security number or an employee identification number other than a social security number; and

1 E. The number of piece-rate units earned and the piece rate.

2 63. "Promptly and easily determine," as stated in California Labor Code § 226(e),
3 means a reasonable person would be able to readily ascertain the information without reference
4 to other documents or information.

5 64. As alleged herein, at all relevant times during the applicable limitations period,
6 Defendants violated California Labor Code section 226 because they did not properly and
7 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
8 the corresponding number of hours worked at each rate by the employee and other requirements
9 of California Labor Code section 226. Defendants failed to state in the wage statements they
10 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
11 including, but not limited to, regular and overtime wages for work they performed off-the-clock
12 (as described above).

13 65. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
14 accurate wage statements was knowing and intentional. Defendants had the ability to provide
15 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
16 provided wage statements that Defendants knew were not accurate.

17 66. As a result of being provided with inaccurate wage statements by Defendants,
18 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
19 accurate wage statements were violated and they were misled about the amount of wages they
20 had actually earned and were owed. In addition, the absence of accurate information on their wage
21 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
22 discovery and mathematical computations to determine the amounts of wages owed, has caused
23 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
24 submission of inaccurate information about wages to state and federal government agencies.
25 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
26 statements whether Defendants complied with their obligations under California Labor Code
27 section 226(a).

28 ///

1 **G. UNTIMELY WAGES DURING EMPLOYMENT**

2 67. Labor Code § 204 states:

3 (a) All wages, other than those mentioned in Section 201,
4 201.3, 202, 204.1, or 204.2, earned by any person in any
5 employment are due and payable twice during each
6 calendar month, on days designated in advance by the
7 employer as the regular paydays. Labor performed
8 between the 1st and 15th days, inclusive, of any calendar
9 month shall be paid for between the 16th and the 26th day
of the month during which the labor was performed, and
labor performed between the 16th and the last day,
inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

10 (b) (1) Notwithstanding any other provision of this
11 section, all wages earned for labor in excess of the normal
12 work period shall be paid no later than the payday for the
next regular payroll period.

13 (2) An employer is in compliance with the
14 requirements of subdivision (a) of Section 226
15 relating to total hours worked by the employee, if
16 hours worked in excess of the normal work period
17 during the current pay period are itemized as
18 corrections on the paystub for the next regular pay
period. Any corrections set out in a subsequently
issued paystub shall state the inclusive dates of
the pay period for which the employer is
correcting its initial report of hours worked.

19 (c) However, when employees are covered by a collective
20 bargaining agreement that provides different pay
21 arrangements, those arrangements shall apply to the
covered employees.

22 (d) The requirements of this section shall be deemed satisfied
23 by the payment of wages for weekly, biweekly, or
24 semimonthly payroll if the wages are paid not more than
25 seven calendar days following the close of the payroll
period.

26 68. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
27 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
28 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.

1 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
2 on workdays they failed to provide them with one or more meal or rest periods in compliance
3 with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
4 and premium wages due during employment within the time periods set by California Labor Code
5 section 204.

6 **H. UNTIMELY FINAL WAGES**

7 69. Labor Code § 201 provides that all earned and unpaid wages of an employee who
8 is discharged are due and payable immediately at the time of discharge.

9 70. Labor Code § 202 provides that all earned and unpaid wages of an employee who
10 quits after providing at least 72-hours notice before quitting are due and payable at the time of
11 quitting and that all earned and unpaid wages of an employee who quits without providing at least
12 72-hours notice before quitting are due and payable within 72 hours.

13 71. By failing to pay earned minimum and premium wages to Plaintiff and the
14 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
15 violation of Labor Code § 201 or § 202.

16 72. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
17 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
18 willful in that, at all relevant times, Defendants have deliberately maintained policies and
19 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
20 relevant times, they have had the ability to comply with those legal requirements.

21 **I. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

22 73. Labor Code § 1174 states:
23 Every person employing labor in this state shall:
24 ...

- 25 (c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.
- 26 (d) Keep, at a central location in the state or at the plants or establishments
27 at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate
units earned by and any applicable piece rate paid to, employees

employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

74. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

75. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

76. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

77. On information and belief, Defendants have willfully failed to maintain the records

1 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
2 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
3 and the Aggrieved Employees.

4 78. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on
5 behalf of herself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved
6 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
7 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
8 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
9 pay period (penalties set by Labor Code section 2699(f)(2)).

10 **J. CIVIL PENALTIES SOUGHT**

11 79. During the applicable time period, Defendants violated California Labor Code
12 §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, 2802, and related
13 Labor Code statutes.

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

17 81. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
18 Employees are entitled to recover civil penalties for each of the Defendants' violations of
19 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198
20 and 2802 during the applicable limitations period in the following amounts:

21 A. For violations of California Labor Code § 204, one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
23 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
24 (penalty amounts established by California Labor Code § 210).

25 B. For violations of California Labor Code § 221, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial and intentional violation (if found to be
27 neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of
28 California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent

violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

82. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated January 20, 2024 and February 21, 2024, Plaintiff gave written notices by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violations. The LWDA has failed
2 to take action in response within 65 days of Plaintiff's notice.

3 83. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in
5 connection with their claims for civil penalties.

6 **PRAYER FOR RELIEF**

7 84. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees,
8 prays for relief and judgment against Defendants as follows:

- 9 A. Civil penalties;
10 B. Costs of suit;
11 C. Reasonable attorneys' fees; and
12 D. Such other relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury
15 trial on all issues so triable.

16 Respectfully submitted,
17

18 MM LAW, APC

19 Dated: March 25, 2024

By:



Maralle Messrelan, Esq.
Attorney for Plaintiff, JUANA
CONSUEGRA HERNANDEZ, and all
others similarly situated