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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FREDDIE BUNCH, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

NAPHCARE OF SAN DIEGO, LLC, a
California Limited Liability Company and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 37-2024-00002535-CU-NP-CTL

FIRST AMENDED COMPLAINT

- 1. FAILURE TO PAY MINIMUM WAGES**
- 2. FAILURE TO PAY WAGES AT AGREED
UPON RATE**
- 3. FAILURE TO PAY OVERTIME**
- 4. FAILURE TO PAY TIMELY WAGES UPON
TERMINATION OF EMPLOYMENT**
- 5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 6. FAILURE TO MAINTAIN ACCURATE
RECORDS**
- 7. UNFAIR BUSINESS PRACTICES**
- 8. FAILURE TO COMPLY WITH THE
PRIVATE ATTORNEY GENERAL ACT**

DEMAND FOR JURY TRIAL

Judge: Matthew C. Braner

Complaint Filed: January 19, 2024

Trial Date: Not yet scheduled

1 Plaintiff FREDDIE BUNCH, on behalf of himself and all others similarly situated, files this
2 First Amended Complaint against defendant NAPHCARE OF SAN DIEGO, LLC, a California
3 Limited Liability Company, and Does 1 to 10 (collectively “Defendant”). Plaintiff is informed and
4 believes and on the basis of that information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This matter is brought as a class action pursuant to California Code of Civil Procedure
7 § 382, on behalf of Plaintiff and all others similarly situated to recover unpaid wages and penalties for
8 Defendant’s violations of the California Labor Code and the California Unfair Competition Law (Bus.
9 & Prof. Code §§ 17200 *et seq.*).

10 2. This class action lawsuit is specifically brought on behalf of all persons employed as
11 non-exempt hourly workers at Naphcare of San Diego, LLC. This class action lawsuit challenges
12 Defendant’s employment practices with respect to (a) failing to pay minimum wages; (b) failing to
13 pay wages at agreed upon rate; (c) failure to pay overtime; (d) failing to pay timely wages upon
14 termination of employment; (e) failing to provide accurate itemized wage statements; (f) failure to
15 maintain accurate records; and (g) unfair business practices.

16 3. Defendant requires employees to undergo significant and time-consuming checks
17 through various security measures which include waiting in lines, ID verification, filling out
18 paperwork, entry and exit through multiple sally ports, and the use of elevators that again include
19 waiting in lines to enter and exit the primary workplace. Plaintiff and members of the putative class
20 spend approximately 20-30 minutes of their workdays going through the various security measures,
21 yet Defendant refuses to compensate Plaintiff and members of the putative class for this time.

22 4. In this case, Plaintiff, on behalf of himself and the putative class, seeks relief for
23 Defendant’s unlawful employment policies, practices and procedures, which have resulted in the
24 failure of Defendant to pay Plaintiff and members of the putative class minimum wage (Labor Code
25 §§1194 and 1197); failure to pay wages at the agreed upon rate (Labor Code § 223); failure to pay
26 overtime (Labor Code §§ 510(a) and 1194); penalties for wages due on termination (Labor Code §§
27 201-203); penalties for failure to timely furnish accurate, itemized wage statements (Labor Code §
28 226); failure to maintain accurate records (Labor Code § 1174); and restitution and other equitable

1 relief (Bus. & Prof. Code § 17200, *et seq.*).

2 5. In this action Plaintiff, on behalf of himself and the members of the putative class, seek
3 unpaid wages, civil and statutory penalties, interest, attorney's fees, injunctive relief, and restitution
4 from Defendant.

5 6. The acts complained of herein have occurred, are presently occurring, and are expected
6 to continue occurring, within the time period from four (4) years preceding the filing of the original
7 Complaint, up to and through the time of trial for this matter ("Relevant Time Period").

8 **PARTIES**

9 ***Plaintiff***

10 7. Plaintiff FREDDIE BUNCH is an individual over the age of eighteen (18) and is a
11 resident of San Diego County, State of California. Throughout the Relevant Time Period, Mr. Bunch
12 worked for Defendant as a non-exempt employee for Defendant in San Diego County, California.

13 ***Defendant Naphcare of San Diego, LLC***

14 8. Plaintiff is informed and believes and based thereon alleges that Defendant Naphcare
15 of San Diego, LLC is now and/or at all times mentioned in this Amended Complaint, based in
16 California, and qualified and registered to do business in the State of California, with locations in San
17 Diego and performs substantial business in California.

18 ***Defendant Does 1 through 10, Inclusive***

19 9. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Amended
20 Complaint were, licensed to do business and/or actually doing business in the State of California.
21 Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of
22 DOES 1 through 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious
23 names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court
24 to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES
25 1 through 5 are believed to be business entities who were also co-employers of the Plaintiff and the
26 putative class herein.

27 ***All Defendants***

28 10. Plaintiff is informed and believes and based thereon alleges that at all times herein

1 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
2 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
3 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
4 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
5 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
6 taken by the other co-Defendant, as herein alleged and was responsible in whole or in part for the
7 matters referred to herein.

8 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
9 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
10 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
11 damages alleged in this Amended Complaint.

12 12. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
13 of them, are now and/or at all times mentioned in this Amended Complaint were members of and/or
14 engaged in a joint venture, partnership and common enterprise, and were acting within the course and
15 scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such were
16 co-employers of the Plaintiff and the putative class herein.

17 13. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
18 of them, at all times mentioned in this Amended Complaint, concurred with, contributed to, approved
19 of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and
20 every one of the other Defendants in proximately causing the injuries and/or damages alleged in this
21 Amended Complaint.

22 **JURISDICTION AND VENUE**

23 14. The California Superior Court has jurisdiction in the matter because the claims exceed
24 the jurisdictional minimum of this court and Defendant performs substantial business in the State of
25 California. Further, the issues herein are based on California Statutes and law including the California
26 Labor Code and the California Unfair Competition Law.

27 15. Venue is proper in the County of San Diego because Defendant transacts substantial
28 business in this County, Plaintiff's claims arose in this County, and because Defendant maintains

1 locations pursuant to contract(s) in the County of San Diego.

2 **FACTUAL ALLEGATIONS**

3 ***Background***

4 16. Defendant provides healthcare, technology, and administrative services to city, county,
5 state and federal agencies throughout the United States.

6 17. In this case, Defendant was providing services pursuant to a contract or contracts at
7 various locations in California including, but not limited to, San Diego Central Jail (“SDCJ”) in
8 downtown San Diego and Las Colinas Detention and Reentry Facility (Las Colinas) in Santee,
9 California.

10 18. Pursuant to this contract or contracts, Defendant staffed employees at various locations
11 in California who, among other things, provide medical and mental health care to inmates. Plaintiff
12 worked for Employer from May 2022 to present as a non-exempt hourly employee.

13 19. At all facilities, entry into the workplace requires significant and time-consuming
14 checks through various security measures which include waiting in lines, ID verification, filling out
15 paperwork, entry and exit through multiple sally ports, and in the case of SDCJ the use of elevators
16 that again include waiting in lines. Defendant and putative class members spend approximately 20-30
17 minutes of their workdays going through the various security measures to enter and exit the workplace.

18 20. Defendant has failed to compensate Plaintiff and other putative class members for the
19 additional time at work dealing with the various security measures.

20 21. Additionally, paystubs are incorrectly provided to Claimant and other putative class
21 members that do not correctly show all hours worked and incorrectly calculate overtime.

22 ***Defendant’s Failure to Pay Minimum Wages and Designated Rates***

23 22. IWC Wage Order, No. 4 defines “hours worked” to mean “the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so.”

26 23. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 formerly provided that
27 on and after January 1, 2021, the minimum wage shall be not less than thirteen dollars (\$13.00) per
28 hour.

1 24. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 provide that on and after
2 July 1, 2022, the minimum wage for all industries shall be not less than fourteen dollars (\$14.00) per
3 hour.

4 25. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 formerly provided that
5 on and after January 1, 2023, the minimum wage shall be not less than fifteen dollars (\$15.00) per
6 hour, and on and after January 1, 2024, the minimum wage for all industries shall be not less than
7 sixteen dollars (\$16.00) per hour.

8 26. Labor Code § 1194(a) provides in relevant part: “Notwithstanding any agreement to
9 work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to
10 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
11 interest thereon, reasonable attorney’s fees, and costs of suit.”

12 27. Labor Code § 1194.2(a) provides in relevant part: “In any action under Section 1193.6
13 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
14 by an order of the commission, an employee shall be entitled to recover liquidated damages in an
15 amount equal to the wages unlawfully unpaid and interest thereon.”

16 28. Labor Code § 1197 provides: “The minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
18 minimum so fixed is unlawful.”

19 29. Defendant classified Plaintiff and putative class members as non-exempt and paid them
20 on an hourly basis. Hours worked include, but are not limited to, all hours that an employee is
21 permitted or suffered to work including, but not limited to, off-the-clock work that an employer either
22 knew or should have known that an employee was performing.

23 30. As a matter of policy and/or practice, Defendant routinely suffered or permitted
24 Plaintiff and putative class members to work portions of the day during which they were subject to
25 Defendants’ control, but Defendants failed to compensate them.

26 31. Throughout the Relevant Time Period, Plaintiff, and the other members of the putative
27 class, were subject to Defendants’ uniform policy and/or practice of failing to pay minimum wages
28 and/or designated rates for hours worked off-the-clock. As a result, Plaintiff and the other members of

1 the putative class were routinely denied compensation for all hours worked.

2 32. Additionally, Defendant did not maintain adequate records of all wages earned and all
3 hours worked.

4 ***Defendants' Failure to Pay Overtime Compensation***

5 33. Labor Code § 1194 provides that an employee receiving less than the legal overtime
6 compensation is entitled to recover in a civil action the unpaid balance of the full amount of this
7 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
8 costs of suit.

9 34. Labor Code § 510(a) states: "Any work in excess of eight hours in one workday and
10 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh
11 day of work in any one workweek shall be compensated at the rate of no less than one and one-half
12 times the regular rate of pay for an employee." Labor Code § 510(a) further states: "Any work in
13 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
14 pay for an employee." Labor Code § 510(a) further states: "[A]ny work in excess of eight hours on
15 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate
16 of pay of an employee."

17 35. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
18 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
19 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
20 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
21 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
22 seventh (7th) day of work in any one workweek.

23 36. Defendants classified Plaintiff and putative class members as non-exempt, therefore
24 they were entitled to overtime compensation for all hours worked in excess of the hours and time
25 specified in the Wage Order, statutes and regulations identified herein.

26 37. As a matter of policy and/or practice, Defendants routinely suffered or permitted
27 Plaintiff and putative class members to work portions of the day during which they were subject to
28 Defendants' control, and failed to compensate them. Accordingly, Defendants failed to properly record

1 the actual hours worked by Plaintiff and members of the putative class, and thus failed to pay overtime
2 wages for the actual amount of overtime hours worked.

3 38. Additionally, as a matter of policy and/or practice, Defendants routinely failed to
4 accurately keep track of all hours for employees and therefore failed to appropriately compensation
5 Plaintiff and other putative class members for all overtime owed.

6 ***Defendant's Failure to Pay All Wages Due at Termination of Employment***

7 39. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
8 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
9 Code § 202 requires an employer to pay an employee who quits any compensation due and owing to
10 said employee within seventy-two (72) hours of an employee's resignation. Labor Code § 203 provides
11 that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as
12 required under §§ 201 and 202, then the employer is liable for waiting time penalties in the form of
13 continued compensation for up to thirty (30) work days.

14 40. Defendant willfully and knowingly failed to pay Plaintiff and the members of the
15 Putative Class, upon termination of employment, all accrued compensation including payment of
16 wages owed and overtime compensation.

17 ***Defendant's Failure to Provide Accurate, Itemized Wage Statements***

18 41. At all times relevant hereto, Labor Code § 226 and IWC Wage Order, No. 4, § 7
19 required employers to maintain adequate employment records and provide employees with accurate
20 itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked
21 during each pay period, and the corresponding number of hours worked at each hourly rate.

22 42. Wage statements provided to Plaintiff and the members of the Putative Class by
23 Defendant do not show all wages earned, all hours worked, or all applicable rates, in violation of the
24 Labor Code § 226, IWC Wage Order No. 4, § 7, and California Unfair Competition Law.

25 43. Moreover, Defendant did not maintain adequate records of all breaks taken.

26 ***Defendant's Failure to Maintain Accurate Records***

27 44. At all times relevant, hereto, Labor Code § 1174 required employers to maintain at a
28 central location or establishment where an employee is employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
2 piece rate paid to, employees employed at the respective establishment.

3 45. Employer violated this section by failing to accurately record the actual hours worked
4 daily by Claimant and other aggrieved employees.

5 46. CA Labor Code § 1174.5 imposes a civil penalty of \$500 for an Employer's failure to
6 maintain accurate and complete records.

7 ***Facts Regarding Willfulness***

8 47. Plaintiff is informed and believes and based thereon alleges that Defendant is and was
9 advised by skilled lawyers, other professionals, employees with human resources background and
10 advisors with knowledge of the requirements of California wage and hour laws.

11 48. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
12 Defendant had a consistent policy or practice of failing to compensate the Putative Class Members,
13 including Plaintiff, for all hours worked.

14 49. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
15 Defendant knew or should have known, that the Putative Class Members, including Plaintiff, not being
16 paid for all hours worked.

17 ***Plaintiff's Exhaustion of Administrative Remedies***

18 50. Plaintiff has complied with the procedures for bringing suit specified in the California
19 Labor Code Private Attorneys General Act, § 2698 *et seq.* ("PAGA"). By letter dated January 18,
20 2024, Plaintiff, on behalf himself and the other Aggrieved Employees, gave written notice through the
21 online filing portal of the Labor and Workforce Development Agency ("LWDA") and through
22 certified mail to the Defendant of the specific provisions of the California Labor Code alleged to have
23 been violated, including the facts and theories to support the alleged violations. More than 65 (sixty-
24 five) days have passed since the date the notice was mailed to Defendants and the LWDA. Plaintiff
25 initially filed suit on January 19, 2024 and with this First Amended Complaint amends to plead
26 exhaustion of administrative remedies under PAGA.

27 **CLASS ALLEGATIONS**

28 51. Plaintiff incorporates by reference the allegations set forth above.

1 52. Plaintiff bring this action as a class action pursuant to California Code of Civil
2 Procedure § 382 on behalf of himself and all others similarly situated. The class which Plaintiff seek
3 to represent is composed of and defines as follows:

4 a. Plaintiff Class: All persons employed by Defendant in non-exempt positions in the
5 State of California who, at any time from four years prior to the date of the filing of the
6 Complaint to present, worked one or more shifts.

7 b. Former Employee Sub-Class: All members of the Plaintiff Class who are no longer
8 employed by Defendant herein.

9 53. Numerosity: Plaintiff is informed and believes and based thereon alleges that the class
10 includes more than 20 individuals and is therefore so numerous that the individual joinder of all
11 members is impracticable. The exact number and identification of class members are unknown to
12 Plaintiff at this time and can only be ascertained through appropriate discovery directed to Defendant.

13 54. Questions of Law and Fact Common to the Class: Plaintiff is informed and believes
14 and based thereon alleges that common questions of law and fact exist as to all members of the class
15 which predominate over any questions affecting only individual members of the class. These common
16 legal and factual questions, which do not vary from class member to class member, and which may be
17 determined without reference to the individual circumstances of any class member, include, but are
18 not limited to, the following:

19 a. whether Plaintiff and the members of the Putative Class are subject to and entitled to
20 the benefits of California wage and hour statutes;

21 b. whether Defendant's policy and practice of failing to pay minimum wages and/or
22 failing to pay wages at the agreed upon rate violated California wage and hour law;

23 c. whether Defendant's policy and practice of failing to pay overtime wages violated
24 California wage and hour law;

25 d. whether Defendant unlawfully and/or willfully failed to promptly pay compensation
26 owing to Plaintiff and the members of the putative Former Employee Sub-class upon
27 termination of their employment, in violation of Labor Code §§ 201-203;

28 e. whether Defendant unlawfully and/or willfully failed to provide Plaintiff and the

members of the Putative Class with true and proper wage statements upon payment of wages, in violation of Labor Code § 226;

f. whether Defendant unlawfully and/or willfully failed to maintain accurate payroll records.

g. whether Plaintiff and members of the Putative Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;

h. whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California, Bus. & Prof. Code § 17200, *et seq.*; and

55. Typicality: Plaintiff is informed and believes and based thereon alleges that the claims of the named Plaintiff are typical of the claims of the members of the Putative Class. Plaintiff and other class members sustained losses, injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the Putative Class.

56. Adequacy of Representation: Plaintiff is informed and believes and based thereon alleges that Plaintiff is an adequate representative of the class because he is a member of the class and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the class. The interests of the class members will fairly and adequately be protected by Plaintiff and his attorneys.

57. Superiority: Plaintiff is informed and believes and based thereon alleges that class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all class members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in excess of twenty individual, repetitive lawsuits. Individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast,

1 the class action device presents far fewer management difficulties and provides the benefit of a single
2 adjudication, economics of scale, and comprehensive supervision by a single court.

3 58. The various claims asserted in this action are additionally or alternatively certifiable
4 under the provisions of the California Code of Civil Procedure Section 382 because:

5 a. The prosecution of separate actions by a significant number of individual class
6 members would create a risk of varying adjudications with respect to individual class
7 members, thus establishing incompatible standards of conduct for Defendant, and

8 b. The prosecution of separate actions by individual class members would also create the
9 risk of adjudications with respect to them that, as a practical matter, would be
10 dispositive of the interest of the other class members who are not a party to such
11 adjudications and would substantially impair or impede the ability of such non-party
12 class members to protect their interests.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED**

15 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

16 59. Plaintiff incorporates by reference the allegations set forth above.

17 60. Labor Code § 1194 provides that an employee receiving less than the legal minimum
18 wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum
19 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
20 suit.

21 61. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by the
22 Labor Commission is unlawful.

23 62. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 set forth the required
24 minimum wage for each year during the relevant time period in question.

25 63. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
26 hours set by the Industrial Welfare Commission, or under conditions prohibited by the applicable
27 Wage Orders, including but not limited to, failing to keep records of and failing to correctly report
28 hours worked.

64. Labor Code § 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours 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; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting an employee from maintaining a personal record of hours worked. Defendant has willfully failed to keep the records required by Section 1174.

65. Throughout the Relevant Time Period, Defendants' hourly compensation scheme purported to compensate Plaintiff and the other members of the putative class for all hours worked. In reality, Defendants suffered or permitted Plaintiff and the other members of the putative class to work portions of their day without compensation, while subject to Defendants' control, which resulted in the Plaintiff and the members of the putative class earning less than the legal minimum wage in the State of California.

66. At all times relevant hereto, Defendants have willfully failed to keep the records required by Section 1174. By failing to maintain adequate time records as required by Labor Code § 1174(d) and IWC Wage Order, No. 4-2001, § 7(A), Defendant has made it difficult to calculate the minimum wage compensation due Plaintiffs and the other members of the putative class.

67. Defendants owe Plaintiff, and the other members of the putative class, minimum wages and liquidated damages pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197, IWC Wage Order, No. 4-2001, § 4 due in amounts to be determined at trial during the three (3) years prior to the filing of the initial Complaint in this action.

68. Plaintiff and the other members of the putative class request payment of unpaid minimum wages due in amounts to be determined at trial, interest, attorneys' fees and costs, against Defendant in a sum as provided by the Labor Code and/or other statutes.

69. Plaintiff and the members of the putative class also request relief as described below.

///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AT THE AGREED UPON RATE**

3 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

4 70. Plaintiff incorporates by reference the allegations set forth above.

5 71. Labor Code § 223 provides, “Where any statute or contract requires an employer to
6 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
7 to pay the wage designated by statute or contract.”

8 72. Throughout the Relevant Time Period, Defendants’ compensation scheme purported to
9 compensate Plaintiff and the other members of the putative class for all hours worked. In reality,
10 Defendants suffered or permitted Plaintiff and the other members of the putative class to work portions
11 of their day without compensation, while subject to Defendants’ control, including when Plaintiff and
12 other members of the putative class entered and exited their workplace through significant security,
13 which resulted in the Plaintiff and the members of the putative class earning less than the designated
14 rate.

15 73. Also throughout the Relevant Time Period, Defendants paid less than the agreed upon
16 compensation owed to Plaintiff and the other members of the putative class, while purporting to pay
17 the designated wage scale. As a result, Defendants’ conduct violates Labor Code § 223.

18 74. Defendants owed and still owe Plaintiff and the other members of the putative class
19 wages at the designated rate pursuant to the Labor Code in amounts to be determined at trial for the
20 hours worked during the Relevant Time Period.

21 75. Plaintiff and the other members of the putative class request payment of unpaid wages
22 at the designated rate in amounts to be determined at trial, plus interest, attorneys’ fees and costs,
23 against Defendants in a sum as provided by the Labor Code and/or other statutes.

24 76. Plaintiff and the members of the putative class also request relief as described below.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

27 77. Plaintiff incorporates by reference the allegations set forth above.

28 78. Pursuant to Labor Code § 510(a): “Any work in excess of eight hours in one workday

1 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
2 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
3 one-half times the regular rate of pay for an employee.”

4 79. At all times relevant hereto, California Labor Code § 510(a) further stated: “Any work
5 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate
6 of pay for an employee.”

7 80. Wage Order No. 4-2001 requires payment of overtime wages equal to one and one-half
8 (1 1/2) times an employee’s regular rate of pay for all hours worked over eight (8) hours per day and/or
9 forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee’s
10 regular rate of pay for all hours worked in excess of eight (8) hours on the seventh (7th) day of work
11 in any one workweek.

12 81. Employer classified Claimant and other aggrieved employees as non-exempt, therefore
13 they were entitled to overtime compensation for all hours worked in excess of the hours and time
14 specified in the Wage Order, statutes and regulations identified, herein.

15 82. As a matter of policy and/or practice, Employer routinely suffered or permitted
16 Claimant and other aggrieved employees to work in excess of forty (40) hours in a workweek and/or
17 eight (8) hours in a workday, and then failed to pay overtime wages.

18 83. Employer additionally shorted the actual hours worked by Claimant and aggrieved
19 employees. Accordingly, Employer failed to properly record the actual hours worked by Claimant and
20 aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime hours
21 worked.

22 84. At all times relevant hereto, Defendants have willfully failed to keep the records
23 required by Section 1174. By failing to maintain adequate time records as required by Labor Code §
24 1174(d) and IWC Wage Order, No. 4-2001, § 7(A), Defendant has made it difficult to calculate the
25 minimum wage compensation due Plaintiffs and the other members of the putative class.

26 85. Plaintiff and the other members of the putative class request payment of unpaid
27 overtime wages due in amounts to be determined at trial, interest, attorneys’ fees and costs, against
28 Defendant in a sum as provided by the Labor Code and/or other statutes.

1 86. Plaintiff and the members of the putative class also request relief as described below.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PAY COMPENSATION AT THE TIME OF TERMINATION**

4 **(On Behalf of Plaintiff and the Former Employee Sub-Class Against All Defendants)**

5 87. Plaintiff incorporates by reference the allegations set forth above.

6 88. California Labor Code § 203 provides that if an employer willfully fails to pay
7 compensation promptly upon discharge, as required by California Labor Code §§ 201 or 202, then the
8 employer is liable for waiting time penalties in the form of continued compensation of up to thirty (30)
9 work days.

10 89. Plaintiff is informed and believes and based thereon alleges that Defendant consistently
11 and willfully failed to timely pay Plaintiff and members of the Putative Former Employee Sub-Class,
12 all wages due and owing upon termination of employment, including unpaid wages and overtime
13 wages.

14 90. Plaintiff, on behalf of himself and the members of the Putative Former Employee Sub-
15 Class, seeks penalties to which he and the members of the putative Former Employee Sub-class are
16 entitled pursuant to California Labor Code § 203, in the amount of Plaintiff and each Former Employee
17 Sub-Class members' daily wage multiplied by thirty (30) days, the exact amount of which is to be
18 determined at trial.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

22 91. Plaintiff incorporates by reference the allegations set forth above.

23 92. Labor Code § 226(a) requires every employer, semimonthly or at the time of each
24 payment of wages, to furnish each of its employees, either as a detachable part of the check, draft, or
25 voucher paying the employee's wages, or separately when wages are paid by personal check or cash,
26 an accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2)
27 total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece
28 rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned and (6) all

1 applicable hourly rates in effect during each respective pay period and the corresponding number of
2 hours worked at each hourly rate by each respective individual.

3 93. As a matter of pattern and practice, in violation of Labor Code § 226, including but not
4 limited to Labor Code § 226(a), Defendant did not maintain accurate records pertaining to Plaintiff or
5 the members of the Putative Class, including, but not limited to records of all hours worked and all
6 overtime hours worked.

7 94. Plaintiff and the members of the Putative Class were harmed by Defendant's failure to
8 provide the required information. Defendant's failure to comply with Labor Code § 226(a) hindered
9 Plaintiff and the members of the Putative Class from determining the amount of wages owed to them,
10 and damaged them in the amount of the unpaid wages and compensation that were not reported by
11 Defendant, as required.

12 95. Pursuant to Labor Code § 226(e), Plaintiff and the members of the putative class are
13 entitled to penalties as follows:

- 14 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation
15 occurs; and
16 b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay
17 period.

18 96. Pursuant to Labor Code Section 226(g), Plaintiff and Putative Class Members are
19 entitled to an award of costs and reasonable attorneys' fees.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO MAINTAIN ACCURATE RECORDS**

22 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

23 97. Plaintiff incorporates by reference the allegations set forth above.

24 98. Labor Code § 1174 requires that every person employing labor in this state shall keep
25 (1) a record showing the names and addresses of all employees employed and the ages of all minors;
26 (2) at a central location in the state or at the plants or establishments at which employees are employed,
27 payroll records showing the hours worked daily by and the wages paid to, and the number of piece-
28 rate units earned by and any applicable piece rate paid to, employees employed at the respective plants

1 or establishments; (3) such records in accordance with rules established for this purpose by the
2 commission, but in any case, on file for not less than three years. This statute also prevents an employer
3 from prohibiting an employee from maintaining a personal record of hours worked.

4 99. Defendant has willfully failed to keep the records required by Section 1174.

5 100. At all times relevant hereto, Defendants have willfully failed to keep the records
6 required by § 1174. By failing to maintain adequate time records as required by Labor Code § 1174(d)
7 and IWC Wage Order, No. 4-2001, § 7(A), Defendant has made it difficult to calculate the minimum
8 wage and overtime compensation due Plaintiffs and the other members of the putative class.

9 101. CA Labor Code § 1174.5 imposes a civil penalty of \$500 for an Employer's failure to
10 maintain accurate and complete records.

11 102. Claimant and other aggrieved employees are seeking all remedies allowed under statute
12 including recovery of wages, interest, attorneys' fees and costs, penalties and those provided by the
13 PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees.

14 **SEVENTH CAUSE OF ACTION**

15 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

16 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

17 103. Plaintiff incorporates by reference the allegations set forth above.

18 104. Within the four years prior to the filing of the initial Complaint in this case, Defendant,
19 and each of them, committed acts of unfair competition as defined by California Business and
20 Professions Code § 17200, *et. seq.*, by engaging in the following unlawful, unfair and fraudulent
21 business acts and practices in the State of California, among others:

- 22 a. failing to pay minimum wage to Plaintiff and members of the Putative Class for all
23 hours worked;
- 24 b. failing to pay wages at the agreed upon rate to Plaintiff and members of the Putative
25 Class;
- 26 c. failing to pay overtime wages to Plaintiff and members of the Putative Class for all
27 hours worked;
- 28 d. failing to promptly pay compensation owing to Plaintiff and the members of the

putative Former Employee Sub-class upon termination of their employment, in violation of Labor Code §§ 201-203;

e. failing to provide Plaintiff and the members of the Putative Class with true and proper wage statements upon payment of wages, in violation of Labor Code § 226; and

f. failing to accurately maintain payroll records;

105. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continue to hold ill-gotten gains belonging to Plaintiff and the other members of the Putative Class. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff and the other members of the Putative Class have suffered economic injuries including, but not limited to, loss of wage compensation.

106. Through Defendant's use of such unlawful, unfair, and/or fraudulent acts and practices, Defendant has gained an unfair advantage over Defendant's competitors.

107. Plaintiff and the other members of the Putative Class seek full restitution on account of the economic injuries they have suffered, along with disgorgement of ill-gotten gains from Defendant as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendant by means of the unlawful, unfair and fraudulent business practices complained of herein.

108. Plaintiff and the other members of the Putative Class seek appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

109. Further, if Defendant is not enjoined from engaging of the unlawful, unfair and fraudulent conduct described above, Defendant will continue unabated in its conduct, which will result in continued irreparable injury to members of the public, including, but not limited to the other members of the Putative Class who currently work for Defendant, and for which there is no adequate remedy at law. Thus, Plaintiff and the other members of the Putative Class request that the Court issue a preliminary and permanent injunction prohibiting Defendant from engaging in the foregoing conduct.

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1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA**

3 **(On behalf of Plaintiff Against All Defendants)**

4 110. Plaintiff incorporates by reference the allegations set forth above.

5 111. Pursuant to California Labor Code section 2698 *et seq.*, Plaintiff is entitled to act as a
6 private attorney general to assess and recover civil penalties against Defendant on behalf of Plaintiff
7 and any other current or former employees of Defendant for violations of the California Labor Code,
8 including but not limited to Sections 201, 202, 203, 226, 226.3, 1174, 1174.5, 1182.12, 1194, 1194.2,
9 1197, 2699 *et seq.* and IWC Wage Order Number 4.

10 112. Plaintiff and other aggrieved employees frequently worked off the clock for Employer.
11 Specifically, Claimant and other aggrieved employees were required to undergo time-consuming
12 security procedures to both enter and exit the workplace. Employer failed to pay Claimant and other
13 aggrieved employees for any time related to security checks at the beginning and end of their shifts.

14 113. As such, Defendants failed to pay minimum wages for all hours worked. Labor Code
15 § 1194 provides that an employee receiving less than the legal minimum wage is entitled to recover in
16 a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation,
17 including interest thereon, reasonable attorney's fees, and costs of suit.

18 114. Defendants owe Plaintiff and other aggrieved employees minimum wages and
19 liquidated damages pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197, IWC Wage Order,
20 No. 4-2001, § 4.

21 115. Labor Code § 223 provides, "Where any statute or contract requires an employer to
22 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
23 to pay the wage designated by statute or contract."

24 116. Throughout the Relevant Time Period, Defendants' compensation scheme purported to
25 compensate Plaintiff and other aggrieved employees for all hours worked. In reality, Defendants
26 suffered or permitted Plaintiff and aggrieved employees to work portions of their day without
27 compensation, while subject to Defendants' control, by requiring Employees to enter and exit the
28 workplace through significant security checkpoints, but not paying employees for that time. This

1 resulted in the Plaintiff and the members of the putative class earning less than the designated rate.

2 117. Plaintiff and aggrieved employees request payment of unpaid wages at the designated
3 rate in amounts to be determined at trial, plus interest, attorneys' fees and costs, against Defendants in
4 a sum as provided by the Labor Code and/or other statutes.

5 118. Defendants routinely suffered or permitted Plaintiff and aggrieved employees to work
6 in excess of forty (40) hours in a workweek and/or twelve (12) hours in a workday, and/or in excess
7 of eight (8) hours on the seventh (7th) day of work in a workweek, and then failed to pay overtime
8 wages and/or premium wages in violation of Labor Code §§ 510(a) and 1194 as well as Wage Order
9 No. 4-2001.

10 119. Defendants additionally shorted the actual hours worked by Plaintiff and aggrieved
11 employees. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
12 and aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime
13 hours worked.

14 120. Defendants violated Labor Code sections 201-203 by failing to timely pay Plaintiff and
15 the aggrieved employees all of their earned and unpaid wages.

16 121. Defendants violated Labor Code sections 226(a), and 226.3 by knowingly and
17 intentionally providing Plaintiff and other aggrieved employees with wage statements that, among
18 others items required, do not show all applicable wage rates, all wages earned, and all hours worked.

19 122. Defendants violated Labor Code § 1174 and IWC Wage Order No. 4 by failing to
20 maintain documentation of the actual hours worked each day by Plaintiff and other aggrieved
21 employees, all wages earned, the number of hours worked, and applicable rate that applies therein,
22 and meal breaks taken.

23 123. Plaintiff has complied with all the pre-lawsuit notice requirements outlined under
24 California Labor Code § 2698 *et seq.* On January 18, 2024, Plaintiff filed a letter online with the
25 California Labor Workforce and Development Agency notifying it of her claims pursuant to PAGA.
26 A copy of the Complaint was also filed with the LWDA online and a \$75 filing fee was paid. Sixty-
27 five days have now passed the California Labor Workforce and Development Agency has not
28 responded to Plaintiff's allegations pursuant to Labor Code § 2699.3. A conformed copy of this First

1 Amended Complaint is being filed with the California Labor Workforce Development Agency on the
2 same day it is being filed with this Court.

3 124. Plaintiff is entitled to recover 25% of any civil penalties assessed against Defendant for
4 such violations, with the remaining 75% of the recover being paid to the Labor and Workforce
5 Development Agency.

6 125. Accordingly, Plaintiff seeks to recover any and all civil penalties otherwise capable of
7 being collected under the law, including, but in no way limited to, any statutes applicable under §
8 2699.5, and any penalty provisions provided for under Labor Code §§ 201, 202, 203, 223, 226, 226.3,
9 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 2699(f)(2) and IWC Wage Order No. 4.

10 126. Labor Code §§ 226(e), 226(h), 1194 and 2699(g) also provides for the payment of
11 reasonable attorneys' fees and costs to a prevailing party seeking recovery under the Private Attorney
12 General Act. Accordingly, Plaintiff seeks to recover civil penalties, attorneys' fees, and costs in an
13 amount to be proven at trial pursuant to any applicable provisions of the law.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff, on behalf of himself and on behalf of the members of the Putative Class,
16 requests the following relief:

- 17 a. An order certifying the classes herein, appointing the named Plaintiff as the class
18 representative of all others similarly situated and appointing counsel for the named
19 Plaintiff as counsel for members of the class;
- 20 b. An order awarding Plaintiff and the members of the Putative Class all wages owed,
21 plus all penalties and compensatory damages;
- 22 c. Liquidated damages;
- 23 d. Civil penalties;
- 24 e. Statutory penalties;
- 25 f. An order requiring imposition of a constructive trust and/or disgorgement of
26 Defendant's ill-gotten gains to pay restitution to the Plaintiff and the members of the
27 Putative Class and to restore to the Plaintiff and the members of the Putative Class all
28 funds acquired by means of any act or practice declared by this Court to be an unlawful,

1 fraudulent or unfair business act or practice, a violation of laws, statutes or regulations,
2 or constituting unfair competition;

3 g. Pre-judgment and post-judgment interest;

4 h. For an award of attorneys' fees and costs incurred in the investigation, filing and
5 prosecution of this action pursuant to Code of Civil Procedure § 1021.5; Business and
6 Profession Code § 17200, *et seq.*; Labor Code §§ 226(e), 226(h), 1194 and 2699(g); and
7 any other applicable provision of law;

8 i. Such other and further relief as the Court may deem necessary or appropriate.

9
10 DATED: March 25, 2024

RIST LAW OFFICE

11 
12 By: _____
13 Thomas A. Rist
14 Attorney for Plaintiff

15 **JURY DEMAND**

16 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

17 DATED: March 25, 2024

RIST LAW OFFICE

18 
19 By: _____
20 Thomas A. Rist
21 Attorney for Plaintiff
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