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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

GRISELDA GARCIA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

EMERITUS CORPORATION, a Washington
Corporation; and DOES 1 through 100,

Defendants.

Case No.: CVRI2400128

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802 and 2804);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Griselda Garcia (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Emeritus
3 Corporation, a Washington Corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
8 *et seq.*, 510, 512, 516, 558, 1194, 1198, 2802, 2804, and 2698 *et seq.*, California Business and
9 Professions Code section 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 5
10 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This action is brought
11 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident living within Riverside County. During the
23 four years immediately preceding the filing of this action and within the statute of limitations
24 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as
25 a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
26 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
27 by Labor Code §§ 201-204, 226 *et seq.*, 510, 512, 516, 558, 1194, 1198, 2802, 2804, and 2698
28 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”),

1 and Wage Order 5, which sets employment standards for the public housekeeping industry,
2 including nursing facilities.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this action and continuing to the present, Defendants did (and
5 continue to do) business within the County of Riverside and the State of California by operating
6 a network of senior living homes, and therefore, were (and are) doing business in the County of
7 Riverside and the State of California.

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

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
18 Classes.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants operate a nationwide network of senior living facilities, including
5 approximately 44 locations within California. Plaintiff was employed by Defendants as a non-
6 exempt “Caregiver” at Defendant’s Corona, CA location from approximately November 17,
7 2022, until approximately April 23, 2023. Plaintiff’s primary job duties included handling laundry
8 needs, serving residents in the dining room, and showering and cleaning residents.

9 10. Plaintiff worked in excess of 8 hours per workday and/or 40 hours per workweek
10 but did not receive overtime compensation equal to one and a half times her regular rate of pay
11 for all overtime hours worked. Defendants paid Plaintiff and other non-exempt employees non-
12 discretionary incentive pay and/or other forms of pay that are not excludable from an employee’s
13 “regular rate” of compensation including, but not limited to, payments denoted in their wage
14 statements as “Sign On Bonus,” or other forms of bonuses or incentives (hereinafter referred to
15 as “Incentive Pay”). Despite paying Plaintiff and other non-exempt employees Incentive Pay,
16 Defendants failed to properly incorporate the value of the Incentive Pay earned by Plaintiff and
17 other non-exempt employees when calculating their respective regular rates of pay, resulting in
18 unpaid overtime wages.

19 11. Defendants also failed to provide Plaintiff and other non-exempt employees with
20 all legally-compliant meal periods due to Defendants’ unlawful meal period policies/practices
21 that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the fifth hour
22 of work. Plaintiff was frequently unable to take her meal period before the end of the fifth hour
23 of work. Specifically, Defendants habitually understaffed their facilities resulting in chronic
24 understaffing and preventing employees from being able to take timely meal periods. On
25 occasions when Plaintiff was not provided with all legally compliant meal periods to which she
26 was entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with
27 meal periods premiums for each workday in which a meal period violation occurred, as required
28 by Labor Code § 226.7. Upon information and belief, even in the event that Defendants did pay

1 meal period premium payments, they paid meal period premiums at Plaintiff's base hourly rate
2 of pay, rather than at Plaintiff's regular rate of pay. Specifically, Plaintiff and other non-exempt
3 employees earned Incentive Pay, which was not correctly incorporated into the regular rate of
4 pay. As a result, Plaintiff and other non-exempt employees did not receive an additional hour of
5 premium pay at their respective regular rates of pay for each workday in which a meal period
6 violation occurred, as required by Labor Code § 226.7.

7 12. Further, Defendants failed to authorize and permit Plaintiff and other non-exempt
8 employees to take *any* duty-free 10-minute rest periods, due to Defendants' unlawful rest period
9 policies/practices. As with meal periods, Defendants did not provide sufficient staff coverage
10 during working hours, leaving Plaintiff and other non-exempt employees completely unable to
11 take rest periods. Furthermore, Defendants failed to compensate Plaintiff with the required rest
12 period premium at her regular rate of pay for each workday in which she experienced a rest period
13 violation as mandated by Labor Code § 226.7.

14 13. Defendants also required Plaintiff and other non-exempt employees to purchase
15 uniform shirts bearing Defendants' name and logo, without reimbursement. As a result,
16 Defendants failed to reimburse Plaintiff and other non-exempt employees for all of their necessary
17 work expenditures.

18 14. Defendants also failed to pay Plaintiff and other non-exempt employees all sick
19 pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be
20 made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Plaintiff
21 and other non-exempt employees received Incentive Pay that was required to be included in their
22 regular rate of pay, but were not, Plaintiff and other non-exempt employees have not been paid
23 all sick pay wages owed to them.

24 15. As a result of Defendants' failure to pay all overtime wages, meal and rest period
25 premium wages owed, and sick pay wages, Defendants also maintained inaccurate payroll records
26 and issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed
27 to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective
28 separations from employment.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to section 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of consists of all Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek and earned Incentive Pay in a corresponding time period, during the four years immediately preceding the filing of this action through the present.
- b. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.
- c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.
- d. The Expense Reimbursement Class consists of all of Defendants' current and former hourly non-exempt employees who worked in California and incurred business expenses without reimbursement, during the four years immediately preceding the filing of this action through the present.
- e. The Wage Statement Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants, during the one year immediately preceding the filing of this action through the present.
- f. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, Rest Period Class, and/or any individual who was not paid all his or her sick pay wages who separated their employment with Defendants during the three years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that

joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- iii. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- iv. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- v. Whether Defendants' reimbursement policies accurately and fully compensated employees for all necessary business expenses;
- vi. Whether Defendants' policies and/or practices regarding reasonable and necessary business expenditures resulted in the failure to properly reimburse members of the Employee Expense Class.
- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226; and
- viii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, such as Defendants' uniform
3 overtime wage policies/practices, meal and rest period policies/practices, reimbursement
4 practices. As such, common questions predominate over individual questions concerning each
5 individual class member's showing as to their eligibility for recovery or as to the amount of their
6 damages.

7 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as a non-exempt employee in California during the
9 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
10 herein, Plaintiff, like the members of the Classes, was deprived of all overtime wages owed, was
11 not provided all required meal periods, was not authorized and permitted to take all required rest
12 periods, did not receive meal and rest period premium wages at her regular rate of pay for missed
13 or non-compliant meal and rest periods, was not reimbursed for all required business expenses,
14 and did not receive accurate wage statements or all final wages owed at the time of her separation
15 from employment.

16 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
17 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
18 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
19 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
20 and-hour class actions in state and federal courts in the past and are committed to vigorously
21 prosecuting this action on behalf of the members of the Classes.

22 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
23 an important public interest in establishing minimum working conditions and standards in
24 California. These laws and labor standards protect the average working employee from
25 exploitation by employers who have the responsibility to follow the laws and who may seek to
26 take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment. The nature of this action and the format of laws available to Plaintiff
28 and members of the Classes make the class action format a particularly efficient and appropriate

1 procedure to redress the violations alleged herein. If each employee were required to file an
2 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
3 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
4 their vastly superior financial and legal resources. Moreover, requiring each member of the
5 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
6 employees who would be disinclined to file an action against their former and/or current employer
7 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
8 employment. Further, the prosecution of separate actions by the individual class members, even
9 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
10 with respect to the individual class members against Defendants herein; and which would
11 establish potentially incompatible standards of conduct for Defendants; and/or legal
12 determinations with respect to individual class members which would, as a practical matter, be
13 dispositive of the interest of the other class members not parties to adjudications or which would
14 substantially impair or impede the ability of the class members to protect their interests. Further,
15 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
16 individual prosecution considering all of the concomitant costs and expenses attending thereto.
17 As such, the Classes identified herein are maintainable as a Class under section 382 of the Code
18 of Civil Procedure.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL OVERTIME WAGES**

21 **(AGAINST ALL DEFENDANTS)**

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

23 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
24 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
25 overtime hours worked and provide a private right of action for the failure to pay all overtime
26 compensation for overtime work performed.

27 25. At all times relevant herein, Defendants were required to properly pay Plaintiff
28 and members of the Overtime Class for all overtime hours worked pursuant to California Labor

Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek.

26. At all times relevant herein, Defendants caused Plaintiff and members of the Overtime Class to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants’ violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

30. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

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1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 32. Wage Order 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of
6 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
7 period worked, or major fraction thereof.

8 33. As alleged herein, and due to Defendants' unlawful rest period policies and/or
9 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
10 Class to take all paid rest periods to which they were legally entitled. Despite Defendants'
11 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
12 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
13 California Labor Code § 226.7.

14 34. The foregoing violations create an entitlement to recovery by Plaintiff and
15 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
16 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
17 to Labor Code §§ 226.7, 516, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE EMPLOYEES FOR**

20 **NECESSARY BUSINESS EXPENDITURES**

21 **(AGAINST ALL DEFENDANTS)**

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

23 36. Based on information and belief, Defendants required Plaintiff and members of
24 the Expense Reimbursement Class to incur work expenses without providing adequate
25 reimbursement.

26 37. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
27 states that, "[a]n employer shall indemnify his or her employee for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of

his or her obedience to the directions of the employer.”

38. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that, “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or her personal representative of any right or remedy to which she is entitled under the laws of this State.”

39. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 5, § 9, Plaintiff and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

40. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

41. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the necessary expenditure.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with wage statements that complied with the requirements of Labor Code § 226(a).

44. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs unable to unable to readily ascertain the information on their wage statements.

45. Defendants’ failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor

Code § 226 et. seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 et. seq.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation from employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime and minimum wages owed, meal and rest period premium wages, and sick pay wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

49. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 51. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 et seq. by, amongst other things, failing to pay Plaintiff and the Classes all overtime wages owed;
8 failing to pay all required meal and rest period premium wages owed; failing to reimburse
9 employees for all required business expenses; knowingly failing to furnish complete and accurate,
10 itemized wage statements; and failing to pay all final wages at the time of separation from
11 employment.

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

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

21 54. The acts complained of herein occurred within the last four years immediately
22 preceding the filing this action.

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

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

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

57. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation for each failure to pay each employee pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

b. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;

- c. Failing to authorize and permit Plaintiff and similarly aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 226.7, 516, and 558;
- d. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- e. Failing to pay Plaintiff and other aggrieved employees sick time pay at their regular rate of compensation in violation of Labor Code § 246;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201- 203;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

58. On January 9, 2024, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

59. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ current and former nonexempt employees who worked for Defendants in California at any time between January 9, 2023 and the present.

60. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et. seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor

Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 57 (a)-(i) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 1194 *et seq.*, 226, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: April 12, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: April 12, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff