

1 **AEGIS LAW FIRM, PC**  
2 SAMUEL A. WONG, State Bar No. 217104  
3 KASHIF HAQUE, State Bar No. 218672  
4 JESSICA L. CAMPBELL, State Bar No. 280626  
5 JOSEPH M. SZILAGYI, State Bar No. 317450  
6 Email: [jcampbell@aegislawfirm.com](mailto:jcampbell@aegislawfirm.com)  
7 Email: [jcampbell@aegislawfirm.com](mailto:jcampbell@aegislawfirm.com)  
8 9811 Irvine Center Drive, Suite 100  
9 Irvine, California 92618  
10 Telephone: (949) 379-6250  
11 Facsimile: (949) 379-6251

12 Attorneys for Plaintiffs, Marta T. Melgar De Melgar  
13 and Jose Luis Ruvalcaba, individually, and on behalf of  
14 all others similarly situated.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN JOAQUIN**

MARTA T. MELGAR DE MELGAR and  
JOSE LUIS RUVALCABA, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

VALMED, INC.; and DOES 1 through 20,  
inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0003326

*Assigned for All Purposes to:*  
*Judge Robert T. Waters; Dept. 11B*

**[Amended as a matter of right, pursuant to  
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses,  
Forced Patronage, and/or Making Unlawful  
Deduction from Pay;
6. Failure to Provide Accurate Itemized Wage  
Statements;
7. Failure to Pay All Wages Due Upon  
Separation of Employment;
8. Violation of Business and Professions Code  
§§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.*  
("PAGA")



1 Plaintiffs Marta T. Melgar De Melgar and Jose Luis Ruvalcaba, individually and on  
2 behalf of others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Marta T. Melgar De Melgar and Jose Luis Ruvalcaba (“Plaintiffs”)  
5 bring this putative class action and representative action pursuant to the Private Attorneys  
6 General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants Valmed, Inc., and DOES  
7 1 through 20, inclusive (collectively, “Defendants”), on Plaintiffs’ own behalf and on behalf of  
8 California citizens who are and were employed by Defendants as non-exempt employees  
9 throughout California.

10 2. Defendants provide services or goods throughout California.

11 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic  
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare  
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair  
14 competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have  
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
- 18 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (c) failing to authorize or permit lawful rest breaks or provide compensation  
20 in lieu thereof;
- 21 (d) failing to reimburse necessary business-related costs;
- 22 (e) making unlawful deductions from wages;
- 23 (f) requiring forced patronage;
- 24 (g) failing to provide accurate itemized wage statements;
- 25 (h) failing to pay wages timely during employment; and
- 26 (i) failing to pay all wages due upon separation of employment.

27 5. Plaintiffs seek monetary relief against Defendants on behalf of Plaintiffs and all  
28 others similarly situated in California to recover, among other things, unpaid wages, un-

1 reimbursed business expenses, benefits, interest, attorneys' fees, costs and expenses, and  
2 penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 224, 226, 226.3, 226.7, 227.3,  
3 450, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698,  
4 *et seq.*, and Code of California Civil Procedure § 1021.5.

### 5 **JURISDICTION AND VENUE**

6 6. This is a class action pursuant to California Code of Civil Procedure § 382. The  
7 monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of  
8 the Superior Court and will be established according to proof at trial.

9 7. This Court has jurisdiction over this action pursuant to the California  
10 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes  
11 except those given by statutes to other courts. The statutes under which this action is brought do  
12 not specify any other basis for jurisdiction.

13 8. This Court has jurisdiction over all Defendants because, upon information and  
14 belief, they are citizens of California, have sufficient minimum contacts in California, or  
15 otherwise intentionally avail themselves of the California market so as to render the exercise of  
16 jurisdiction over them by the California courts consistent with traditional notions of fair play and  
17 substantial justice.

18 9. Venue is proper in this Court because, upon information and belief, Defendants  
19 reside, transact business, or have offices in this county, and the acts and omissions alleged herein  
20 took place in this county.

### 21 **THE PARTIES**

22 10. Plaintiffs are residents of California and worked for Defendants during the  
23 relevant time periods as alleged herein.

24 11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter  
25 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as  
26 employers, whose employees were and are engaged throughout this county and the State of  
27 California.

1           12.     Plaintiffs are unaware of the true names or capacities of the defendants sued  
2 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend  
3 this Complaint and serve such fictitiously named defendants once their names and capacities  
4 become known.

5           13.     Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20  
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at  
7 all relevant times.

8           14.     Plaintiffs are informed and believe, and thereon allege, that each defendant acted  
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint  
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant  
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the  
12 employer and/or joint employer of Plaintiffs and the class members.

13           15.     Plaintiffs are informed and believe, and thereon allege, that each and all of the  
14 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or  
15 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on  
16 the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the  
17 official policy of Defendants.

18           16.     At all relevant times, Defendants, and each of them, acted within the scope of  
19 such agency or employment, or ratified each and every act or omission complained of herein. At  
20 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of  
21 each and all the other Defendants in proximately causing the damages herein alleged.

22           17.     Plaintiffs are informed and believe, and thereon allege, that each of said  
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
24 omissions, occurrences, and transactions alleged herein.

25                           **CLASS ACTION ALLEGATIONS**

26           18.     Plaintiffs bring this action under Code of Civil Procedure § 382 on Plaintiffs' own  
27 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor  
28 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

1           19. All claims alleged herein arise under California law for which Plaintiffs seek  
2 relief authorized by California law.

3           20. Plaintiffs' proposed class consists of and is defined as follows:

4           Class

5           All California citizens currently or formerly employed by Defendants as non-  
6 exempt employees in the State of California at any time between September 19,  
7 2019<sup>1</sup> and the date of class certification ("Class").

8           21. Plaintiffs also seek to certify the following subclasses of employees:

9           Waiting Time Subclass

10          All members of the Class who separated their employment with Defendant at any  
11 time between September 19, 2020 and the date of class certification ("Waiting  
12 Time Subclass").

13          22. Plaintiffs reserve the right to modify or re-define the Class, establish additional  
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on  
15 investigation, discovery, and specific theories of liability.

16          23. Members of the Class and the Waiting Time Subclass described above will be  
17 collectively referred to as "Class Members."

18          24. There are common questions of law and fact as to the Class Members that  
19 predominate over any questions affecting only individual members including, but not limited to,  
20 the following:

21               (a) Whether Defendants failed to pay Plaintiffs and Class Members all wages  
22               (including minimum wages and overtime wages) for all hours worked by  
23               Plaintiffs and Class Members.

24               (b) Whether Defendants required Plaintiffs and Class Members to work over  
25               eight (8) hours per day, over twelve (12) hours per day, and/or over forty  
26

---

27          <sup>1</sup> The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020  
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

(40) hours per week and failed to pay them proper overtime compensation for all overtime hours worked.

(c) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without legal compensation.

(d) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks.

(e) Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business-related costs expended for the benefit of Defendants, and/or required forced patronage.

(f) Whether Defendants made unlawful or unauthorized deductions from wages paid to Plaintiffs and Class Members for business-related costs.

(g) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements.

(h) Whether Defendants failed to pay wages timely to Plaintiffs and Class Members;

(i) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(j) Whether Defendants' conduct was willful or reckless.

(k) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals.

1 The identities of the Class Members are readily ascertainable by inspection of Defendants'  
2 employment and payroll records.

3 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims  
4 (or defenses, if any) of the Class Members because Defendants' failure to comply with the  
5 provisions of California's wage and hour laws entitled each Class Member to similar pay,  
6 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries  
7 sustained by the Class Members, because they arise out of and are caused by Defendants'  
8 common course of conduct as alleged herein.

9 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the  
10 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims  
11 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed  
12 class counsel, are competent and experienced in litigating large employment class actions and  
13 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have  
14 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and  
15 costs that have been and will be necessarily expended for the prosecution of this action for the  
16 substantial benefit of the Class Members.

17 (d) Superiority: The nature of this action makes use of class action  
18 adjudication superior to other methods. A class action will achieve economies of time, effort, and  
19 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the  
20 same issues can be adjudicated in the same manner for the entire Class and Waiting Time  
21 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods  
22 to efficiently manage this case as a class action.

23 (e) Public Policy Considerations: Employers in the State of California violate  
24 employment and labor laws every day. Current employees are often afraid to assert their rights  
25 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions  
26 because they believe their former employers might damage their future endeavors through  
27 negative references and/or other means. Class actions provide class members who are not named  
28

1 in the complaint with a type of anonymity that allows for the vindication of their rights while  
2 affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other  
5 California residents as non-exempt employees throughout California at Defendants' California  
6 business location(s).

7 27. Defendants continue to employ non-exempt employees within California.

8 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
9 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who  
10 were knowledgeable about California's wage and hour laws, employment and personnel  
11 practices, and the requirements of California law.

12 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
13 should have known that Plaintiffs and Class Members were entitled to receive wages for all time  
14 worked (including minimum wages and overtime wages) and that they were not receiving all  
15 wages earned for work that was required to be performed. In violation of the Labor Code and  
16 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum  
17 wages and overtime wages) for all hours worked at the correct rate and within the correct time.

18 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
19 should have known that Plaintiffs and Class Members were entitled to receive all required meal  
20 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular  
21 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the  
22 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal  
23 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular  
24 rate of pay when they did not receive a timely, uninterrupted meal period.

25 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
26 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or  
27 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay  
28 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage

1 Orders, Plaintiffs and Class Members did not receive all rest breaks or payment of one (1)  
2 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when a rest break  
3 was missed, late, or interrupted.

4 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
5 should have known that Plaintiffs and Class Members were entitled to reimbursement and/or  
6 indemnification for all necessary business expenditures or losses as a direct consequence of the  
7 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the  
8 Labor Code and IWC Wage Orders, Plaintiffs and Class Members incurred necessary business  
9 expenses or losses (including but not limited to forced patronage), but were not reimbursed nor  
10 indemnified of such expenses or losses that were incurred as a direct consequence of the  
11 discharge of their duties, or of their obedience to the directions of Defendants.

12 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
13 should have known that Plaintiffs and Class Members were entitled to receive all wages without  
14 unlawful or unauthorized deductions. In violation of the Labor Code and IWC Wage Orders,  
15 Defendants required Plaintiffs and Class Members to accept pay with unlawful or unauthorized  
16 deductions.

17 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
18 should have known that Plaintiffs and Class Members were entitled to receive itemized wage  
19 statements that accurately showed the following information pursuant to the Labor Code: (1)  
20 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units  
21 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all  
22 deductions, provided that all deductions made on written orders of the employee may be  
23 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for  
24 which the employee is paid; (7) the name of the employee and only the last four digits of his or  
25 her social security number or an employee identification number other than a social security  
26 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable  
27 hourly rates in effect during the pay period and the corresponding number of hours worked at  
28

1 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members  
2 were not provided with accurate itemized wage statements.

3 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
4 should have known that the Waiting Time Subclass was entitled to timely payment of wages due  
5 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did  
6 not receive payment of all wages within the permissible time periods.

7 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
8 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants  
9 had the financial ability to pay such compensation but willfully, knowingly, and intentionally  
10 failed to do so in order to increase Defendants' profits.

11 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief  
12 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,  
13 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal  
14 period premium payments, unpaid rest period premium payments, unreimbursed business  
15 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

## 16 **FIRST CAUSE OF ACTION**

### 17 **FAILURE TO PAY MINIMUM WAGES**

18 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

19 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
20 though fully set forth herein.

21 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees  
22 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser  
23 wage than the minimum so fixed is unlawful.

24 40. Plaintiffs and Class Members were employees entitled to the protections of Labor  
25 Code §§ 1194 and 1197.

26 41. During the relevant time period, Defendants failed to pay Plaintiffs and Class  
27 Members all wages owed when Defendants did not pay minimum wage for all hours worked.  
28

1           42.     During the relevant time period, Defendants failed to pay at least minimum wage  
2 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

3           43.     Defendants' failure to pay Plaintiffs and Class Members the required minimum  
4 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class  
5 Members are entitled to recover the unpaid balance of their minimum wage compensation as  
6 well as interest, costs, and attorneys' fees.

7           44.     Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to  
8 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued  
9 interest thereon.

10                               **SECOND CAUSE OF ACTION**

11                               **FAILURE TO PAY OVERTIME**

12           (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

13           45.     Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
14 though fully set forth herein.

15           46.     Labor Code § 1198 and the applicable IWC Wage Order provide that it is  
16 unlawful to employ persons without compensating them at a rate of pay either one and one-half  
17 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours  
18 worked by the person on a daily or weekly basis.

19           47.     Specifically, the applicable IWC Wage Orders provide that Defendants are and  
20 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one  
21 and one-half times (1½) their regular rate of pay when working and for all hours worked in  
22 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first  
23 eight (8) hours of work on the seventh day of work in a workweek.

24           48.     The applicable IWC Wage Orders further provide that Defendants are and were  
25 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times  
26 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in  
27 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

1           49.     California Labor Code § 510 codifies the right to overtime compensation at one  
2     and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a  
3     day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh  
4     consecutive day of work, and overtime compensation at twice the regular hourly rate for hours  
5     worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the  
6     seventh day of work in a workweek.

7           50.     Labor Code § 510 and the applicable IWC Wage Orders provide that employment  
8     of more than six days in a workweek is only permissible if the employer pays proper overtime  
9     compensation as set forth herein.

10          51.     Plaintiffs and Class Members were employees entitled to the protections of  
11     California Labor Code §§ 510 and 1194.

12          52.     During the relevant time period, Defendants required Plaintiffs and Class  
13     Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a  
14     seventh consecutive day of work, entitling them to overtime wages.

15          53.     During the relevant time period, Defendants failed to pay Plaintiffs and Class  
16     Members overtime wages for all overtime hours worked. To the extent these hours qualify for  
17     the payment of overtime wages, Plaintiffs and Class Members were not paid proper overtime  
18     wages.

19          54.     In violation of California law, Defendants knowingly and willfully refused to  
20     perform their obligations and compensate Plaintiffs and Class Members for all wages earned and  
21     all hours worked.

22          55.     Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of  
23     overtime compensation, as required by California law, violates the provisions of Labor Code §§  
24     510 and 1198, and is therefore unlawful.

25          56.     Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to  
26     recover their unpaid overtime and double time compensation as well as interest, costs, and  
27     attorneys' fees.

28     ///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

4 57. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
5 though fully set forth herein.

6 58. Labor Code § 226.7 provides that no employer shall require an employee to work  
7 during any meal period mandated by the IWC Wage Orders.

8 59. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall  
9 employ any person for a work period of more than five (5) hours without a meal period of not  
10 less than 30 minutes, except that when a work period of not more than six (6) hours will  
11 complete the day’s work the meal period may be waived by mutual consent of the employer and  
12 the employee.”

13 60. Labor Code § 512(a) provides that an employer may not require, cause, or permit  
14 an employee to work for a period of more than five (5) hours in a day without providing the  
15 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if  
16 the total work period per day of the employee is not more than six (6) hours, the meal period may  
17 be waived by mutual consent of both the employer and the employee.

18 61. Labor Code § 512(a) also provides that an employer may not employ an employee  
19 for a work period of more than ten (10) hours per day without providing the employee with a  
20 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no  
21 more than twelve (12) hours, the second meal period may be waived by mutual consent of the  
22 employer and the employee only if the first meal period was not waived.

23 62. During the relevant time period, Plaintiffs and Class Members worked more than  
24 five (5) or ten (10) hours and did not receive all compliant meal periods because their meal  
25 periods were missed, late, short, interrupted, and/or they were not permitted to take a second  
26 meal period.

1           63. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require  
2 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of  
3 compensation for each work day that a compliant meal period is not provided.

4           64. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal  
5 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)  
6 and section 11 of the applicable IWC Wage Order.

7           65. As a result of Defendants' failure to pay Plaintiffs and Class Members an  
8 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and  
9 Class Members suffered and continue to suffer a loss of wages and compensation.

#### 10                                   **FOURTH CAUSE OF ACTION**

##### 11                                   **FAILURE TO PERMIT REST BREAKS**

12                               (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

13           66. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
14 though fully set forth herein.

15           67. Labor Code § 226.7(a) provides that no employer shall require an employee to  
16 work during any rest period mandated by the IWC Wage Orders.

17           68. Section 12 of the applicable IWC Wage Order states "[e]very employer shall  
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in  
19 the middle of each work period[.]" and the "[a]uthorized rest period time shall be based on the  
20 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major  
21 fraction thereof[.]" unless the total daily work time is less than three and one-half (3½) hours.

22           69. During the relevant time period, Plaintiffs and Class Members did not receive all  
23 ten (10) minute rest periods for every four (4) hours or major fraction thereof worked, including  
24 working in excess of ten (10) hours, because they were required to work through their rest  
25 periods and/or were not authorized to take their rest periods.

26           70. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires  
27 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of  
28 compensation for each work day that a compliant rest period is not provided.

1           71.     At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest  
2 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §  
3 226.7(b) and section 12 of the applicable IWC Wage Order.

4           72.     As a result of Defendants' failure to pay Plaintiffs and Class Members an  
5 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class  
6 Members suffered and continue to suffer a loss of wages and compensation.

7                                   **FIFTH CAUSE OF ACTION**

8                   **FAILURE TO REIMBURSE BUSINESS EXPENSES, FORCED PATRONAGE, OR**  
9                   **MAKING UNLAWFUL DEDUCTION FROM PAY**

10                   (Violation of Labor Code §§ 221, 224, 450, 2800, 2802; Violation of IWC Wage Order)

11           73.     Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
12 though fully set forth herein.

13           74.     Labor Code §§ 221 and 224 prohibit employers from making unauthorized or  
14 unlawful deductions from pay.

15           75.     Labor Code § 450 prohibits forced patronage.

16           76.     Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his  
17 employee for losses caused by the employer's want of ordinary care."

18           77.     Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her  
19 employee for all necessary expenditures or losses incurred by the employee in direct  
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
21 the employer . . . ."

22           78.     Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for  
23 reimbursement of necessary expenditures under this section shall carry interest at the same rate  
24 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred  
25 the necessary expenditure or loss."

26           79.     Labor Code § 2802(c) states that "[f]or purposes of this section, the term  
27 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited  
28 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

80. During the relevant time period, Plaintiffs and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants, suffered forced patronage to purchase business-items for Defendants' benefit, and/or suffered unlawful deductions from their pay by Defendants.

81. In violation of Labor Code §§ 450, 2800, and 2802, Defendants failed to reimburse or indemnify Plaintiffs and Class Members for their expenses due to Defendants' knowing and intentional failure to reimburse necessary business expenditures, and/or Defendants' forced patronage in connection with Plaintiffs' and Class Members' work and job duties.

82. In violation of Labor Code §§ 221 and 224, Defendants made unlawful deduction from wages paid to Plaintiffs and Class Members for Defendants' business expenses.

83. As a direct result, Plaintiffs and Class Members have suffered and continue to suffer losses, and therefore seek complete reimbursement and indemnification of necessary business expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the rights, including, but not limited to attorneys' fees.

## SIXTH CAUSE OF ACTION

## FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

84. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

85. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number,

1 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly  
2 rates in effect during the pay period and the corresponding number of hours worked at each  
3 hourly rate by the employee.

4 86. During the relevant time period, Defendants have knowingly and intentionally  
5 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs  
6 and Class Members. The deficiencies include, among other things, the failure to correctly state  
7 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the  
8 number of hours worked at each hourly rate by Plaintiffs and Class Members.

9 87. As a result of Defendants' knowing and intentional failure to comply with Labor  
10 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their  
11 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an  
12 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor  
13 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and  
14 their protected interest in receiving, accurate itemized wage statements under Labor Code  
15 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage  
16 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours  
17 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to  
18 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to  
19 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur  
20 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.  
21 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from  
22 Defendants.

23 88. Plaintiffs and Class Members are entitled to recover from Defendants the greater  
24 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty  
25 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars  
26 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding  
27 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.  
28

89. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and Class Members from knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members have suffered an injury, in the exact amount of damages and/or penalties to be shown according to proof at trial.

## SEVENTH CAUSE OF ACTION

## **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Violation of Labor Code §§ 201, 202, and 203)

90. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

91. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

92. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

93. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

94. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

1           95. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover  
2 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members’  
3 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a  
4 maximum of thirty (30) days.

5                                   **EIGHTH CAUSE OF ACTION**

6                   **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

7                                   (Violation of Business and Professions Code §§ 17200, *et seq.*)

8           96. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as  
9 though fully set forth herein.

10          97. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of  
11 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .  
12 . .”

13          98. A violation of California Business and Professions Code §§ 17200, *et seq.*, may  
14 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies  
15 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to  
16 suffer injuries-in-fact.

17          99. Defendants’ policies and practices violated state law in at least the following  
18 respects:

- 19                   (a) Failing to pay all wages earned (including minimum wage and overtime  
20 wages) to Plaintiffs and Class Members at the proper rate and in a timely  
21 manner in violation of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1198.
- 22                   (b) Failing to provide compliant meal periods without paying Plaintiffs and  
23 Class Members premium wages for every day said meal periods were not  
24 provided in violation of Labor Code §§ 226.7 and 512.
- 25                   (c) Failing to authorize or permit compliant rest breaks without paying  
26 Plaintiff and Class Members premium wages for every day said rest  
27 breaks were not authorized or permitted in violation of Labor Code §  
28 226.7.

- 1 (d) Failing to reimburse Plaintiffs and Class Members for necessary business-  
2 related expenses, forced patronage, and/or making unlawful deduction  
3 from pay in violation of Labor Code §§ 221, 224, 450, 2800, and 2802.
- 4 (e) Failing to provide Plaintiffs and Class Members with accurate itemized  
5 wage statements in violation of Labor Code § 226.
- 6 (f) Failing to timely pay all earned wages to the members of the Waiting  
7 Time Subclass upon separation of employment in violation of Labor Code  
8 §§ 201, 202, and 203.

9 100. As alleged herein, Defendants systematically engaged in unlawful conduct in  
10 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages  
11 (minimum and overtime wages), failing to provide meal periods and rest breaks or  
12 compensation in lieu thereof, failing to reimburse necessary business-related costs and  
13 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and  
14 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in  
15 order to decrease their costs of doing business and increase their profits.

16 101. At all relevant times herein, Defendants held themselves out to Plaintiffs and  
17 Class Members as being knowledgeable concerning the labor and employment laws of  
18 California.

19 102. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs  
20 and Class Members wages and monies, thereby creating for Defendants an artificially lower  
21 cost of doing business in order to undercut their competitors and establish and/or gain a greater  
22 foothold in the marketplace.

23 103. By violating the foregoing statutes and regulations as herein alleged, Defendants'  
24 acts constitute unfair and unlawful business practices under California Business and Professions  
25 Code §§ 17200, *et seq.*

26 104. As a result of the unfair and unlawful business practices of Defendants as alleged  
27 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and  
28 restitution in an amount to be shown according to proof at trial.

105. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

## **NINTH CAUSE OF ACTION**

### **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

106. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

107. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

108. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

109. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 221 and 224 for making unauthorized or unlawful deductions from pay;
- f. violation of Labor Code § 450 for forced patronage;
- g. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- h. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged.

110. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore are properly suited to represent the interests of all other aggrieved employees.

111. Plaintiffs exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

112. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

113. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

**PRAYER FOR RELIEF**

On Plaintiffs' own behalf and on behalf of all others similarly situated, Plaintiffs pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;

2. For appointment of Marta T. Melgar De Melgar and Jose Luis Ruvalcaba as class representatives;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

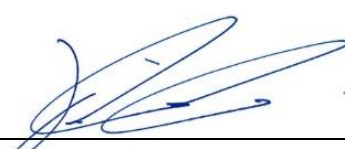
13. For civil penalties;

1           14.     For reasonable attorneys' fees, costs of suit, and interest to the extent permitted  
2 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§  
3 226(e), 1194, and 2698 *et seq.*; and

4           15.     For such other relief as the Court deems just and proper.  
5  
6

7 Dated: July 2, 2024

**AEGIS LAW FIRM, PC**

8  
9 By:  \_\_\_\_\_

10 Joseph M. Szilagyi  
11 Attorneys for Plaintiffs  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28