

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Treana Allen (SBN: 302922)
tallen@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 28 2016

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

Attorneys for Plaintiff LUISA FAJARDO, individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LUISA FAJARDO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PARA LOS NINOS, a California non-
profit corporation; and DOES 1 through
50, inclusive,

Defendant.

Case No.:

BC 618609

CLASS ACTION COMPLAINT

1. Violation of Cal. Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Cal. Labor Code §§ 226.7, 512 (Rest Period Violations);
4. Violation of Cal. Labor Code § 204 (Unpaid Wages During Employment);
5. Violation of Cal. Labor Code §§ 201-203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Cal. Labor Code §§ 226(a), (e) (Failure to Issue Accurate Itemized Wage Statements);
7. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
8. Violation of Cal. Labor Code §§ 2699 et seq. (Private Attorney's General Act)

DEMAND FOR JURY TRIAL

Plaintiff LUISA FAJARDO, individually and on behalf of all others similarly situated,
complains and alleges on information and belief as follows:

I.

INTRODUCTION

1. This is a class action brought on behalf of Plaintiff and the class she seeks to represent ("Plaintiff Class" or "Class Members"). Class Members consist of all non-exempt, hourly-paid employees currently and/or formerly employed by Defendant PARA LOS NINOS, (hereinafter "PLN" or "DEFENDANT"), during the Class Period. The term "Class Period" is defined as four (4) years prior to the filing of this Complaint through the date of certification. Plaintiff reserves the right to amend this Complaint to reflect a different "Class Period" as further discovery is conducted.

2. Plaintiff, individually and on behalf of Class Members, seeks relief against Defendant for the failure to pay all wages due, including both regular and overtime wages, and minimum wages; the failure to provide meal and rest periods or compensation in lieu thereof; the failure to pay wages due during employment; the failure to pay wages due at separation of employment; and the failure to provide accurate itemized wage statements upon payment of wages.

3. Plaintiff further seeks equitable remedies in the form of declaratory relief and injunctive relief, and relief under the Bus. & Prof. Code sections 17200 et seq. for unfair business practices.

II.

JURISDICTION AND VENUE

4. Venue is proper in this Judicial district and the County of Los Angeles because Defendant maintains its locations, transacts business, is headquartered in this county, and obligations and liability arise in this county, making the subject of this action in the County of Los Angeles, California.

5. The wages, statutory penalties, monetary damages, and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to California Constitution, Article VI, section 10. The statutes under which this action is brought do not

1 specify any other basis for jurisdiction.

2 6. The California Superior Court has jurisdiction in the matter because the
3 individual claims are under the seventy-five thousand dollar (\$75,000.00) individual
4 jurisdictional threshold and the five million dollar (\$5,000,000) aggregate jurisdictional
5 threshold for Federal Court and, upon information and belief, Plaintiff and Defendant are
6 residents of and/or domiciled in the State of California. Further, there is no federal question at
7 issue as the issues herein are based solely on California Statutes and law including the
8 California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure,
9 Rules of Court, and Business and Professions Code.

10 III.

11 ADMINISTRATIVE REMEDIES

12 7. Prior to filing this Complaint, on July 22, 2015, Plaintiff gave written notice by
13 certified mail to the Labor and Workforce Development Agency ("LWDA") and to Defendant
14 PARA LOS NINOS of the specific provisions alleged to have been violated, including the facts
15 and theories to support the alleged violations as required by Cal. Labor Code § 2699.3. Please
16 see a true and correct copy of the letter to the LWDA, dated July 22, 2015 attached hereto as
17 Exhibit "A."

18 IV.

19 THE PARTIES

20 A. The Plaintiff

21 8. Plaintiff, at all relevant times herein, was an employee of Defendant and entitled
22 to compensation for all hours worked, overtime compensation, and penalties from Defendant.
23 Plaintiff was employed by Defendant for at least four (4) years prior to the commencement of
24 this action, working at PARA LOS NINOS in the County of Los Angeles in California.
25 Plaintiff was employed by Defendant during the Class Period in a non-exempt hourly position.
26 Each of the Class Members consists of identifiable, current and/or former similarly situated
27 persons who were employed in non-exempt hourly positions in California for Defendant during
28 the Class Period.

B. The Defendant

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant PARA LOS NINOS, is a California non-profit corporation whose facilities are located in California, and has its principal place of business within Los Angeles County. Defendant PARA LOS NINOS owns and operates educational centers and early childhood development programs throughout Los Angeles County, and/or was the employer of Plaintiff and Plaintiff Class during the Class Period. On information and belief, Plaintiff alleges that Defendant PARA LOS NINOS is conducting business in good standing in California.

10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendants are legally responsible for the payment of rest and meal period compensation, and wages to Plaintiff and Plaintiff Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Plaintiff Class.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

///

13. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer, and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

V.

GENERAL ALLEGATIONS

14. California Labor Code § 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

15. Defendant consistently required Plaintiff and Plaintiff class to do child observation packets after work hours, without compensation. This was a routine and habitual practice, which required Plaintiff and those similarly situated to work many hours “off the clock.”

16. Further, Business and Professions Code § 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code § 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

17. During all, or a portion of the Class Period, Plaintiff and each member of the Plaintiff Class was employed by Defendant and each of them, in the State of California. Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare Commission (IWC) Wage Orders, and Labor Code section 510, and/or other applicable wage orders, regulations and statutes, and each Plaintiff Class member

1 was not subject to an exemption for executive, administrative and professional employees,
2 which imposed obligations on the part of the Defendant to pay Plaintiff and Plaintiff Class
3 members lawful overtime compensation. Plaintiff and Plaintiff Class were covered by one or
4 more Industrial Welfare Commission (IWC) Wage Orders, and Cal. Labor Code section 226.7
5 and other applicable wage orders, regulations and statutes which imposed an obligation on the
6 part of the Defendants to pay Plaintiff and Plaintiff Class rest and meal period compensation.

7 18. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff
8 Class members for all hours worked.

9 19. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff
10 Class members overtime compensation for all hours worked over eight (8) hours of work in one
11 (1) day or forty (40) hours in one (1) week, and double-time for hours worked in excess of
12 twelve (12) in one day.

13 20. During the Class Period, Defendant was obligated to provide Plaintiff and
14 Plaintiff Class with a work free meal and/or rest period(s).

15 21. Plaintiff and each Class member primarily performed non-exempt work in excess
16 of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations
17 or statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime
18 compensation at time and a half rate, and when applicable, double time rates as set forth by the
19 applicable Wage Orders, regulations and/or statutes.

20 22. Class members who ended their employment during the Class Period, but were
21 not paid the above due compensation for all hours worked timely upon the termination of their
22 employment as required by Cal. Labor Code sections 201-203, are entitled to penalties as
23 provided by Cal. Labor Code section 203.

24 23. During the Class Period, the Defendant and each of them, required the Plaintiff
25 and Class members to work off the clock as well as overtime without lawful compensation, in
26 violation of the various applicable Wage Orders, regulations and statutes, and the Defendant:
27 (1) Willfully failed and refused, and continues to fail and refuse to pay compensation for all
28 hours worked, lawful overtime compensation to the Plaintiff Class members; and (2) willfully

1 failed and refused, and continues to fail and refuse to pay due and owing wages promptly upon
2 termination of employment to Plaintiff and certain Plaintiff Class members.

3 24. During the Class Period, Defendant, and each of them failed and/or refused to
4 schedule Plaintiff and Plaintiff Class in an overlapping manner so as to reasonably provide meal
5 and/or rest breaks and/or shift relief for Plaintiff and Plaintiff Class, thereby causing members
6 of the Plaintiff Class to work without being given paid ten (10) minute rest periods for every
7 four (4) hours or major fraction thereof worked and without being given a thirty (30) minute
8 meal period for shifts of at least five (5) hours and second thirty (30) minute meal periods for
9 shifts of at least ten (10) hours during which Plaintiff Class were relieved of all duties and free
10 to leave the premises.

11 25. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class
12 in an overlapping manner so as to reasonably ensure meal and/or rest breaks were taken within
13 the required statutory time frame as required by law. Furthermore, Defendant failed and/or
14 refused to pay any Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as
15 premium compensation for failure to provide rest and/or meal periods or to provide such rest
16 and/or meal periods within the statutory time frame as a result of their scheduling policy.

17 VI.

18 CLASS ALLEGATIONS

19 26. Defendant consistently required Plaintiff and Plaintiff Class to do child
20 observation packets after work hours, without compensation. This was a routine and habitual
21 practice, which required Plaintiff and those similarly situated to work many hours "off the
22 clock."

23 27. Plaintiff brings this action on behalf of herself and all other similarly situated
24 persons, as a class action pursuant to California Code of Civil Procedure §382 on behalf of
25 herself and all other similarly situated persons in the Plaintiff Class, which is composed of and
26 defined as follows: All persons who are employed or have been employed by Defendant on or
27 after four years prior to the commencement of this action who were not paid the legally
28 requisite overtime rate and/or double-time rate for all hours worked in excess of eight (8) hours

1 per workday and/or forty (40) hours per workweek, were not paid for all hours worked, were
2 required to work off the clock, were denied meal and/or rest periods due to Defendant's failure
3 to provide shift relief thereby depriving Plaintiff and Plaintiff Class of the requisite rest and/or
4 meal periods altogether or in the statutorily required time frame, and payments under Cal. Labor
5 Code section 226.7 and to whom Defendant failed to pay wages of terminated or resigned
6 employees under Cal. Labor Code §§201-203.

7 28. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to
8 amend or modify the Class description with greater specificity or further division into
9 subclasses or limitation to particular issues.

10 29. This action has been brought and may be maintained as a class action pursuant
11 to Cal. Code of Civil Procedure §382 because there is a well-defined common interest of many
12 persons and it is impractical to bring them all before the court.

13 30. This Court should permit this action to be maintained as a class action pursuant
14 to Cal. Code of Civil Procedure §382 because:

- 15 (a) The questions of law and fact common to the Class predominate over any
16 question affecting only individual members;
- 17 (b) A class action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the Class;
- 19 (c) The Class is so numerous that it is impractical to bring all members of the
20 Class before the Court;
- 21 (d) Plaintiff and the other members of the Class will not be able to obtain
22 effective and economic legal redress unless the action is maintained as a
23 class action;
- 24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the common law and statutory violations and other
26 improprieties and in obtaining adequate compensation for the damages
27 and injuries which Defendant's actions have inflicted upon the Class;

- (f) There is a community of interest in ensuring that the combined assets and available insurance of the Defendant is sufficient to adequately compensate members of the Class for the injuries sustained;
- (g) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:
- (1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish an incompatible standard of conduct for the Defendant; and/or
 - (2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who is, or may be, responsible Defendants; and
- (h) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

VII.

FIRST CAUSE OF ACTION

Failure to Pay All Wages

(By Plaintiff against Defendant)

31. Plaintiff re-alleges and incorporates paragraphs 1 through 30 of this Complaint as if fully alleged herein.

32. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class overtime premium and/or double-time premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to schedule Plaintiffs and Plaintiff Class in such a manner that allowed Plaintiffs and Plaintiff

1 Class to be relieved of their shift immediately, thereby causing Plaintiffs and Plaintiff Class to
2 work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiffs
3 and Plaintiff Class seek overtime and/or double-time in an amount according to proof. Pursuant
4 to Cal. Labor Code §1194, the Plaintiff Class seeks the payment of all overtime and/or double-
5 time compensation which they earned and accrued four (4) years prior to filing this Complaint,
6 according to proof.

7 33. Defendant has willfully violated the Cal. Labor Code by failing to pay Plaintiff
8 and Plaintiff Class all wages. Plaintiff and Plaintiff Class were denied wages as a result of
9 Defendant's policy of having Plaintiff and Plaintiff Class work through meal and/or rest periods
10 and having Plaintiff and Plaintiff Class work "off the clock." Further, Defendant has regularly
11 violated the Cal. Labor Code with respect to meeting the requirements of paying wages earned,
12 including, overtime, double-time and remuneration when calculating the employees regular rate
13 of pay, as herein before alleged. Defendant has intentionally excluded remuneration that must
14 be included in all employees' regular rate of pay in order to avoid payment of overtime wages
15 and other benefits in violation of the Cal. Labor Code and the order issued by the IWC.
16 Thereby, Defendant is able to reduce its overhead and operating expenses and gain an unfair
17 advantage over competing companies complying with state law.

18 34. Additionally, Plaintiff and Plaintiff Class are entitled to attorneys' fees, costs,
19 pursuant to California Labor Code §§218.5, 226, 1194, and prejudgment interest.

20 VIII.

21 SECOND CAUSE OF ACTION

22 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

23 (By Plaintiff against Defendant)

24 35. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
25 paragraphs 1 through 34 as if fully alleged herein.

26 36. Labor Code sections 226.7 and 512 provide that no employer shall employ any
27 person for a work period of more than five (5) hours without providing a meal period of not less
28 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours

1 without a second meal period of not less than thirty (30) minutes.

2 37. Labor Code section 226.7 provides that if an employer fails to provide an
3 employee a meal period in accordance with this section, the employer shall pay the employee
4 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided in accordance with this section.

6 38. Defendant failed to schedule Plaintiff and similarly situated persons in an
7 overlapping manner so as to reasonably ensure that Plaintiff and Plaintiff Class could take
8 and/or receive such meal periods within the statutory timeframe. As a result, Plaintiffs and
9 Plaintiff Class were often forced to forego a meal period and/or work during their meal period.
10 In so doing, Defendant has intentionally and improperly denied meal periods to the Plaintiffs
11 and Plaintiff Class in violation of Labor Code sections 226.7 and 512 and other regulations and
12 statutes.

13 39. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
14 five (5) hours in a workday.

15 40. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked more
16 than eight (8) hours in a workday.

17 41. At all times relevant hereto, the Defendant, and each of them, failed to schedule
18 Plaintiff and similarly situated persons in a manner so as to reasonably provide meal and/or
19 work free meal period as required by Labor Code sections 226.7 and 512.

20 42. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in
21 such a way as to provide a meal period, and/or work free meal period to the Plaintiff and
22 Plaintiff Class, thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer,
23 damages in the amounts which is presently unknown, but which exceed the jurisdictional limits
24 of this Court and which will be ascertained according to proof at trial.

25 43. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
26 meal period compensation pursuant to Labor Code section 226.7 which they is owed beginning
27 four (4) years prior to filing this complaint as well as the assessment of any statutory penalties
28 against the Defendant, and each of them, in a sum as provided by the Labor Code and/or other

1 statutes.

2 **VIII.**

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

5 (By Plaintiff against Defendant)

6 44. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
7 paragraphs 1 through 43 as if fully alleged herein.

8 45. Labor Code section 226.7 provides that employers authorize and permit all
9 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

10 46. Labor Code section 226.7(b) provides that if an employer fails to provide and
11 employee rest periods in accordance with this section, the employer shall pay the employee one
12 (1) hour of pay at the employees' regular rate of compensation for each workday that the rest
13 period is not provided.

14 47. Defendant failed and or refused to implement a relief system by which Plaintiff
15 and Plaintiff Class could receive rest breaks and/or work free rest breaks. Furthermore, due to
16 Defendant's relief system, Plaintiff and Plaintiff Class did not receive their rest breaks within
17 the required statutory time frame. By and through their actions, Defendant intentionally and
18 improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of Labor Code
19 sections 226.7 and 512.

20 48. At all times relevant hereto, the Plaintiff and Plaintiff Class, have worked more
21 than four (4) hours in a workday.

22 49. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
23 and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiff and Plaintiff
24 Class have suffered, and will continue to suffer, damages in amounts which are presently
25 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
26 according to proof at trial.

27 50. Plaintiff, individually, and on behalf of employees similarly situated, requests
28 recovery of rest period compensation pursuant to Labor Code section 226.7, which they are

1 owed beginning four (4) years prior to filing this complaint as well as the assessment of any
2 statutory penalties against the Defendant, in a sum as provided by the Labor Code and/or any
3 other statute.

4 **IX.**

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Timely Pay Wages During Employment**

7 (By Plaintiff against Defendant)

8 51. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
9 paragraphs 1 through 50 as if fully alleged herein.

10 52. During the Class period, Labor Code section 204 applied to Defendant's
11 employment of Plaintiffs and the rest of the Class. At all times relevant hereto, Labor Code
12 section 204 provided that all wages earned by any employee, such as a member of the Class, in
13 any employment between the 1st and 15th days, inclusive, of any calendar month, other than
14 those wages due upon termination of an employee, are due and payable between the 16th and
15 26th day of the month during which the work were performed.

16 53. Furthermore, at all times relevant hereto, Labor Code section 204 provides that
17 all wages earned by any employee, such as a member of the Class, in any employment between
18 the 16th and last day, inclusive, of any calendar month, other than those wages due upon
19 termination of an employee, are due and payable between the 1st and 10th day of the following
20 month.

21 54. During the Class period, Defendant failed to pay Plaintiff and the rest of the
22 Class wages for all hours worked. Specifically, Plaintiff is informed and believes and thereon
23 alleges that Defendant did not compute and/or improperly deducted time from the actual or
24 correct amount of wages due Plaintiff and the rest of the class members.

25 55. During the Class period, Defendant failed to pay Plaintiff and the rest of the
26 Classes all wages earned and all compensation owed and therefore violated Labor Code section
27 204. Accordingly, Plaintiff and the rest of the Class are entitled to recover from Defendant all
28 damages, penalties and other remedies available for violation of Labor Code section 204.

X.

FIFTH CAUSE OF ACTION

Failure to Pay Wages of Terminated or Resigned Employees

(By Plaintiff against All Defendants)

56. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 55 as if fully alleged herein.

57. Plaintiff and the Plaintiff Class were required to work off the clock, and as a result were not compensated for all hours worked. Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of Defendant requiring Plaintiff and Plaintiff Class to work off the clock.

58. Plaintiff and/or the members of the Plaintiff Class, who ended their employment with the Defendant during the Class Period, were entitled to be promptly paid for all hours worked, lawful overtime compensation, and other premiums, as required by Labor Code sections 201 through 203. Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of Plaintiff and Plaintiff Class being required to work off the clock, as well as pay overtime and/or double-time compensation as a result of working in excess of eight (8) hours per day and/or forty (40) hours per week. Plaintiff and Plaintiff Class seek the payment of penalties pursuant to Labor Code section 203, according to proof.

XI.

SIXTH CAUSE OF ACTION

Failure to Keep Accurate Payroll Records (Labor Code Sections 1174, 226, and 226.3)

(By Plaintiff against All Defendants)

59. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 58 as if fully alleged herein.

60. Labor Code section 1174(d), requires an employer to keep at a central location in California or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily, and the wages paid to, each employee. Labor Code section 226(a) requires an employer to provide employees—either as a detachable part of the check,

1 draft, or voucher paying the employee's wages, or separately when wages are paid by personal
2 check or cash—an accurate itemized wage statement in writing.

3 61. Labor Code section 226(e) provides that if an employer knowingly and
4 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
5 the total hours worked by the employee and the applicable hourly overtime rates, causing the
6 employee injury, then the employee is entitled to recover the greater of all actual damages or
7 fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent
8 violation, up to four thousand dollars (\$4,000). Plaintiff is informed and believes that Defendant
9 willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

10 62. IWC Wage Orders require that every employer shall keep accurate information
11 with respect to each employee, including time records showing when each employee begins and
12 ends each work periods, the total daily hours worked by each employee and the total hours
13 worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes
14 that Defendant willfully and intentionally failed to make and/or keep records which accurately
15 reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that
16 Defendant's records do not accurately reflect where Plaintiff and Plaintiff Class worked during
17 their meal and/or rest breaks. Furthermore, Defendant's records do not reflect all hours worked,
18 specifically the hours Plaintiff and Plaintiff Class were required to work off the clock and for all
19 hours spent attending weekly meetings.

20 63. Plaintiff is informed and believes that Defendant's failure to keep accurate
21 payroll records, as described above, violated Labor Code sections 1174(d) and 226(a), and the
22 applicable wage order. Pursuant to Labor Code § 2699(f)(2), Plaintiff and the Plaintiff Class
23 are entitled to penalties of \$100.00 and for the initial violation and \$200.00 for each subsequent
24 violation for every pay period during which these records and information were not kept by
25 Defendant.

26 64. Plaintiff is informed and believes that Defendant's failure to keep and maintain
27 accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff
28 Class are entitled to statutory penalties pursuant to Labor Code section 1174.5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XII.

SEVENTH CAUSE OF ACTION

Unfair Competition

(By Plaintiff against All Defendants)

65. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 64 of this complaint.

66. Business and Professions Code sections 17200 et seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

67. Business and Professions Code section 17204 allows “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the UCL.

68. Labor Code section 90.5 subdivision (a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

69. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint including but not limited to violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1194, and 1194.2; as well as other statutes.

70. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 et seq.

71. The acts and practices described above constitute unfair, unlawful, and fraudulent Business Practices, and unfair competition, within the meaning of Business and

1 Professions Code sections 17200 et seq. Among other things, the acts and practices have forced
2 Plaintiff and other similarly situated workers to labor for many hours in a row without receiving
3 the meal and rest periods and overtime compensation, to which they are entitled by law, while
4 enabling Defendant to gain an unfair competitive advantage over law-abiding employers and
5 competitors.

6 72. As a result of Defendant's acts, Plaintiff has suffered injury in fact in being
7 denied their statutorily entitled meal and rest periods and full compensation for hours of labor.
8 As a result of Defendant's unlawful acts of unfair competition, Plaintiff has lost money and
9 property in the form of a loss of wages in an amount to be proven at trial.

10 73. As a direct and proximate result of the aforementioned acts and practices,
11 Plaintiff and the Class have suffered a loss of wages in an amount to be proven at trial.

12 74. Business and Professions Code sections 17203 provides that a court may make
13 such orders or judgments as may be necessary to prevent the use or employment by any person
14 of any practice which constitutes unfair competition. Injunctive relief is necessary and
15 appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business
16 acts and business practices alleged above.

17 75. Business and Professions Code sections 17203 provides that the Court may
18 restore to any person in interest any money or property that may have been acquired by means
19 of such unfair competition. Plaintiffs and the Class are entitled to restitution pursuant to
20 Business and Professions Code section 17203 for wages and payments unlawfully withheld
21 from employees, including the fair value of the meal and rest periods taken away from them
22 during the four-year period prior to the filing of this complaint.

23 76. Business and Professions Code section 17202 provides: "Notwithstanding
24 Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a
25 penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class
26 are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business
27 and Professions Code section 17202.

28 77. Plaintiff's success in this action will enforce important rights affecting the public

1 interest, and, in that regard, Plaintiff sues on behalf of the general public as well as herself and
2 others similarly situated. Plaintiff and the Plaintiff Class seek and are entitled to restitution, civil
3 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

4 78. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
5 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
6 public right, and it would be against the interests of justice to penalize Plaintiff by forcing them
7 to pay attorneys fees from the recovery in this action. Attorneys' fees are appropriate pursuant
8 to Code of Civil Procedure section 1021.5 and otherwise.

9 XIII.

10 **EIGHTH CAUSE OF ACTION**

11 **Violation of the California Labor Code Private Attorney's General Act**

12 (By Plaintiff against All Defendants)

13 79. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
14 paragraphs 1 through 78 of this complaint.

15 80. Labor Code sections 2698-2699 The Labor Code Private Attorney's General Act
16 of 2004 provides for a civil penalty to be assessed and collected by the Labor and Workforce
17 Development Agency, or any of its departments, divisions, commissions, boards agencies or
18 employees for a violation of the Cal. Labor Code, may be recovered through a civil action by an
19 aggrieved employee on behalf of himself or herself, and collectively on behalf of all other
20 current or former employees.

21 81. Whenever the Labor and Workforce Development Agency, or any of its
22 departments, divisions, commissions, boards agencies or employees has discretion to assess a
23 civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the
24 same limitations and conditions to assess a civil penalty.

25 82. Plaintiff, and all non-exempt employees of Defendant are "aggrieved employees"
26 as defined by Labor Code section 2699 in that they are all current or former employees of
27 Defendant, and one or more of the alleged violations was committed against them.

28 83. Prior to filing this Complaint, on July 22, 2015, Plaintiff gave written notice by

1 certified mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant
2 PARA LOS NINOS, of the specific provisions alleged to have been violated, including the facts
3 and theories to support the alleged violations as required by Labor Code § 2699.3. Please see a
4 true and correct copy of letter to the LWDA, dated July 22, 2015 attached herein as Exhibit
5 “A.”

6 84. Pursuant to Labor Code section 2699.3, notwithstanding any other provision of
7 law, Plaintiffs may as a matter of right amend the existing complaint to add a cause of action
8 under Labor Code section 2699 at any time within 60 days of notification by the LWDA that it
9 did not intend to investigate the alleged violations contained in Plaintiffs’ Labor Code section
10 2699 notice.

11 85. Plaintiff, individually and on behalf of all aggrieved employees, assert all of the
12 claims in this Complaint against Defendant, under the capacity of the Private Attorney’s
13 General Act, and seek all statutory penalties available under the Labor Code.

14 86. Pursuant to Labor Code section 2699, Plaintiff, individually and on behalf of all
15 aggrieved employees, requests and is entitled to recover from Defendant unpaid wages,
16 overtime compensation, rest and meal period compensation and penalties, waiting period wages
17 and penalties according to proof, penalties for failure to keep accurate payroll records, interest,
18 attorney’s fees and costs pursuant to Labor Code sections 201-203, 218.5, 226, 226.7, 512,
19 1174, and 1194, as well as all statutory penalties and attorneys fees against Defendant, and each
20 of them, including but not limited to:

21 (a.) Penalties under Labor Code section 2699 in the amount of \$100 for each
22 aggrieved employee per pay period for each initial violation, and \$200 for each
23 aggrieved employee per pay period for each subsequent violation;

24 (b.) Penalties under Code of Regulations Title 8 section 11070 in the amount of \$50
25 for each aggrieved employee per pay period for the initial violation, and \$200 for
26 each aggrieved employee per pay period for each subsequent violation;

27 (c.) Penalties under Labor Code section 210 in addition to and entirely independent
28 and apart from, any other penalty provided in the Labor Code in the amount of

\$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

(d.) Any and all additional penalties and sums as provided by the Cal. Labor Code and/or other statutes.

87. In addition thereto, Plaintiff seeks and is entitled to 50% of all penalties obtained under Labor Code section 2699 to be allocated to the General Fund, and 25% of all penalties obtained to be allocated to the Labor and Workforce Development Agency, for education of employers and employees about their rights and responsibilities under the Labor Code and 25% to all aggrieved employees.

88. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code sections 201-203, 218.5, 226, 226.7, 512, 1174, 1194, and any other applicable statute.

XIV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from the unlawful business practices of Defendant;
4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated or resigned employees;
5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 226.7, 512 and 1194, and as provided for by *Labor Code* § 2699;
6. For interest accrued to date;
7. Injunctive relief, enjoining Defendants from engaging in the unlawful and unfair business practices complained herein;

1 8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair business
2 practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring
3 Defendant has unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages
4 and overtime compensation in violation of California law, failed to pay wages to former
5 employees Plaintiff and other certain members of Plaintiff Class, failed to provide
6 Plaintiff and Plaintiff Class accurate itemized wage statements upon payment of wages,
7 and declaring the amounts of damages, penalties, equitable relief, costs, and attorney's
8 fees Plaintiff and Plaintiff Class are entitled to.

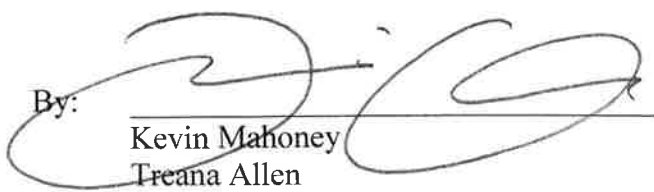
9 9. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and 1194;

10 10. For reasonable attorneys' fees pursuant to *Labor Code* §§ 226 and 1194 and;

11 For all such other and further relief as the Court may deem just and proper.
12
13

14 Dated: April 27, 2016

MAHONEY LAW GROUP, APC

15
16 By: 

Kevin Mahoney

Treana Allen

Attorneys for Plaintiff LUISA FAJARDO,
as an individual and on behalf of all
employees similarly situated
17
18
19
20
21
22
23
24
25
26
27
28