

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com

3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
5 PMB 42554
6 West Hollywood, CA 90069
7 Telephone: (213) 725-9094
8 Facsimile: (213) 634-2485

9 Attorneys for Plaintiff,
10 ALAN GARCIA, and all others similarly situated
11 (Additional attorneys for Plaintiff on following page)

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13
14 **FOR THE COUNTY OF ORANGE COUNTY**
15 **(UNLIMITED JURISDICTION)**

16 ALAN GARCIA, on behalf of himself and all
17 others similarly situated, and the general public,
18 and as an “aggrieved employee” on behalf of
19 other “aggrieved employees” and the State of
20 California under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 ELITE CARE, INC., a California corporation;
25 and DOES 1–50, inclusive,

26 *Defendants.*

Case No. 30-2024-01390486-CU-OE-CXC

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 Plaintiff, Alan Garcia (hereafter “Plaintiff” or “Garcia”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Elite Care, Inc.,
9 and Does 1 through 50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
12 related relief. These claims are based on Defendants’ failures to:

13 (A) Pay all wages, including minimum and regular wages earned for all hours
14 worked at the correct rates of pay;

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

17 (D) Pay premium wages for unprovided meal periods;

18 (E) Pay premium wages for unprovided rest breaks;

19 (F) Indemnify for all business expenditures;

20 (G) Issue only accurate and complete itemized wage statements;

21 (H) Timely pay wages upon termination of employment;

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
24 action.

25 **II. THE PARTIES**

26 3. Plaintiff Alan Garcia is a resident of California. At all relevant times, Plaintiff was
27 an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
28 “aggrieved employee” within the meaning of Labor Code § 2699 (c).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 years prior to the filing of this action and ending on the date that final judgment is entered in this
2 action (“Class” or “Class Members”).

3 10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
4 right to amend or modify the class definition with greater specificity, by further division into
5 subclasses and/or by limitation to particular issues.

6 11. **Numerosity:** The Class Members are so numerous that the individual joinder of
7 each individual Class Member is impractical. While Plaintiff does not currently know the exact
8 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
9 minimum required for numerosity under California laws.

10 12. **Commonality and Predominance:** Common questions of law and fact exist as to
11 all Class Members and predominate over any questions which affect only individual Class
12 Members. These questions include, but are not limited to:

13 A. Whether Defendants failed to pay all wages earned to Class Members for
14 all hours worked at the correct rates of pay, including minimum wages and regular wages for off-
15 the-clock work, and meal period premium and rest period premium wages;

16 B. Whether Defendants failed to provide the Class Members with all meal
17 periods in compliance with California law;

18 C. Whether Defendants failed to authorize and permit the Class Members to
19 take all rest periods in compliance with California law;

20 D. Whether Defendants failed to indemnify the Class Members for the
21 reasonable expenses they incurred during the course of performing their duties;

22 E. Whether Defendants knowingly and intentionally failed to provide the
23 class with accurate and complete itemized wage statements;

24 F. Whether Defendants willfully failed to provide the class with timely final
25 wages;

26 G. Whether Defendants engaged in unfair competition within the meaning of
27 Business and Professions Code sections 17200, et seq., with respect to the Class; and

28 H. Whether Class Members are entitled to restitution of money or property



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 that Defendants may have acquired from them through alleged Labor Code violations.

2 13. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
3 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
4 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
5 Code, the Wage Order, and the Business and Professions Code.

6 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
7 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
8 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
9 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
10 Members.

11 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
12 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
13 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
14 Plaintiff and absent Class Members.

15 16. **Superiority:** A class action is vastly superior to other available means for fair and
16 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
17 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
18 and efficiently prosecute their common claims in a single forum without the unnecessary
19 duplication of effort and expense that numerous individual actions would entail. In addition, the
20 monetary amounts due to many individual Class Members are likely to be relatively small and
21 would thus make it difficult, if not impossible, for individual Class Members to both seek and
22 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
23 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
24 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

25 **IV. STATEMENT OF FACTS**

26 17. The Wage Order applies to "all persons employed in the public housekeeping
27 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
28 Wage Order defines "Public Housekeeping Industry" to mean



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Garcia, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Garcia, and all of the Class Members, worked for a substance abuse rehabilitation facility. Accordingly, Garcia and all of the other Class Members are entitled to the protections the Wage Order provides.

18. At all relevant times, the Defendants issued wages to Garcia and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Garcia and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Garcia and the Class Members often worked five (5) to six (6) days in a workweek, and between eight (8) to twelve (12) hours per workday. At all relevant times, Garcia and the Class Members worked over eight (8) hours in one workday and over forty (40) hours in one workweek.

19. At all relevant times, the Defendants required Garcia and the Class Members to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, the Defendants often required that Plaintiff and the Class Members continue to work after they had clocked out for meal breaks or after the conclusion of their shifts, requiring them to complete tasks such as administering Pro Re Nata prescriptions



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

(medicine taken as the circumstances arise), completing rounds (check-ups) on detoxing clients, documenting observations on a client portal (Kipu Health software) and taking out the trash. The Defendants failed to compensate Garcia and the Class Members for this work performed off-the-clock.

20. At all relevant times, the Defendants failed to provide Garcia and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which they failed to provide Garcia and all of the other Class Members with meal periods as required by law. Due to the workload and failure to hire sufficient staff members, the Defendants denied Garcia and the Class Members their 30-minute off-duty meal period within the first five hours of work. The Defendants did not permit Garcia and the Class Members working as support staff and in similar positions to take their meal unless there was another employee present to cover for them. Therefore, most times, Garcia and the Class Members were forced to forego their meal and rest breaks because there was no other employee present to cover for them. At all relevant times, the Defendants did not hire sufficient staff to allow Garcia and the Class Members to take their timely meal and rest breaks. However, Defendants required Garcia and the Class Members to clock-out within the first five hours of work for meal breaks and continue working while clocked-out. In the event that the Class Members did take their meal periods, they were required to monitor their personal mobile phones (Teams application) at all times for work purposes. Furthermore, at all relevant times, the Defendants required Garcia and the Class Members to remain on site premises throughout their work shifts. Therefore, at all relevant times, Garcia and the Class Members were denied their uninterrupted, off-duty meal periods.

21. At all relevant times, due to the workload and failure to hire sufficient staff members, the Defendants failed to authorize and permit Garcia and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Furthermore, at all relevant times, the Defendants required Garcia and the Class Members to remain on site premises throughout their work shifts. The Defendants also failed to pay premium wages for days on which they failed to authorize and permit Garcia and all of the other Class



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 Members to take rest breaks as required by law.

2 22. At all relevant times, the Defendants required Garcia and all of the other Class
3 Members to incur certain business expenses in the course of performing their duties. The
4 Defendants required Garcia and all of the other Class Members to supply mobile phones to
5 perform their job duties. The Defendants required Garcia and all of the other Class Members to
6 use the Teams application on a daily basis in the course of their work, to communicate and receive
7 directions from the Defendants. However, the Defendants did not provide these mobile phones or
8 other devices with the Teams application and did not reimburse Garcia and the other Class
9 Members for these items. At all relevant times, the Defendants required Garcia and the Class
10 Members to travel in their personal automotive vehicles between site locations each day, though
11 they did not reimburse them for all of the mileage they incurred. Therefore, the Defendants failed
12 to reimburse Garcia and the Class Members for all mileage expenses. Furthermore, on several
13 occasions, Garcia and the Class Members were required to purchase groceries for the clients,
14 which would cost from \$40 to \$50, however, the Defendants did not provide these items and did
15 not reimburse Garcia and the other Class Members for these items.

16 23. At all relevant times, the Defendants failed to issue to Garcia and all of the other
17 Class Members complete and accurate wage statements that state all hours worked at the correct
18 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
19 the wage statements they issued to Garcia and all of the other Class Members the unpaid wages
20 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
21 earned, all meal period premium wages earned, all rest break premium wages earned.

22 24. The Defendants also failed to timely pay Garcia and all of the other Class Members
23 all earned wages as described above during and at the conclusion of employment.

24 25. The Defendants failed to maintain accurate employee records of Garcia and all of
25 the other Class Members.

26 26. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
27 unlawful practices and policies, Plaintiff and the Class Members were:

28 A. Not provided with all off duty meal periods;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

- 1 B. Not authorized and permitted to take all rest break periods;
- 2 C. Not paid one hour's pay for each workday in which Defendants failed to
- 3 authorize and permit them to take one or more timely rest periods;
- 4 D. Not paid one hour's pay for each workday in which Defendants failed to
- 5 provide them with one or more timely meal periods;
- 6 E. Not paid all wages earned, including, but not limited to, minimum and
- 7 regular /wages for work performed while clocked out;
- 8 F. Not indemnified for all necessary business expenditures incurred during
- 9 the discharge of their duties;
- 10 G. Not provided with accurate and complete wage statements; and
- 11 H. Not timely paid all earned and unpaid wages at the time their employment
- 12 ended.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE**

15 **CORRECT RATES OF PAY**

16 **Lab. Code §§ 510, 1194, 1197, and 1198**

17 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

- 18 27. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 19 28. At all relevant times, Plaintiff and the Class Members have been non-exempt
- 20 employees entitled to the protections of both the Labor Code and the Wage Order.
- 21 29. Section 2 of the Wage Order defines "hours worked" as "the time during which an
- 22 employee is subject to the control of an employer, and includes all the time the employee is
- 23 suffered or permitted to work, whether or not required to do so."
- 24 30. Within the healthcare industry, the term "hours worked" means the time during
- 25 which an employee is suffered or permitted to work for the employer, whether or not required to
- 26 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA").
- 27 Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is
- 28 defined by federal regulations:



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

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

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...”

29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 quite as much as service itself, and time spent lying in wait for threats to
2 the safety of the employer's property may be treated by the parties as a
3 benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S.
4 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily
5 includes "all the time during which an employee is necessarily required to
6 be on the employer's premises, on duty or at a prescribed work place."
7 *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-
8 Portal Act did not change the rule except to provide an exception for
9 preliminary and postliminary activities. See Section 785.34."

10
11 29 C.F.R. § 785.7.

12
13 "Rest periods of short duration, running from 5 minutes to about 20
14 minutes, are common in industry. They promote the efficiency of the
15 employee and are customarily paid for as working time. They must be
16 counted as hours worked. Compensable time of rest periods may not be
17 offset against other working time such as compensable waiting time or on-
18 call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,
19 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.
20 Cal. 1945))"

21
22 29 C.F.R. § 785.18.

23
24 "Bona fide meal periods are not worktime. Bona fide meal periods do not
25 include coffee breaks or time for snacks. These are rest periods. The
26 employee must be completely relieved from duty for the purposes of
27 eating regular meals. Ordinarily 30 minutes or more is long enough for a
28 bona fide meal period. A shorter period may be long enough under special



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 conditions. The employee is not relieved if he is required to perform any
2 duties, whether active or inactive, while eating. For example, an office
3 employee who is required to eat at his desk or a factory worker who is
4 required to be at his machine is working while eating. *Culkin v. Glenn L.*
5 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d
6 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
7 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
8 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
9 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
10 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton*
11 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.
12 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
13 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
14 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
15 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

16
17 29 C.F.R. § 785.19. Healthcare employees who are required to wear pagers and respond to patient
18 emergencies during meal breaks are entitled to payment from their employer for meal breaks
19 because their employer has not fully relieved them of their responsibilities during those times.
20 *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also
21 *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)
22 (employees required to work during half hour meal break given that they had to stay at the facility
23 and be available to respond to requests to return or check out weapons and equipment); *Wahl v.*
24 *Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police
25 officers stated a claim under the Fair Labor Standards Act where they alleged that they were not
26 paid for meal periods but were required to remain within a certain area, respond to emergencies
27 and citizen requests, and remain accessible).

28 31. Section 4 of the Wage Order requires an employer to pay non-exempt employees



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 32. Labor Code section 510 states:
4

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and the
7 first eight hours worked on the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the regular rate of
9 pay for an employee. Any work in excess of 12 hours in one day shall be
10 compensated at the rate of no less than twice the regular rate of pay for an
11 employee. In addition, any work in excess of eight hours on any seventh day of a
12 workweek shall be compensated at the rate of no less than twice the regular rate of
13 pay of an employee. Nothing in this section requires an employer to combine more
14 than one rate of overtime compensation in order to calculate the amount to be paid
15 to an employee for any hour of overtime work.
16

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

19 34. Labor Code section 1197 makes it unlawful for an employer to pay an employee
20 less than the minimum wage required under the applicable Wage Order for all hours worked
21 during a payroll period.

22 35. Labor Code section 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 fixed by the order or under conditions of labor prohibited by the order is unlawful.
2 42. Within the healthcare industry, the term “hours worked” means the time during
3 which an employee is suffered or permitted to work for the employer, whether or not required to
4 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).
5 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is
6 defined by federal regulations:

7
8 ...As a general rule the term “hours worked” will include: (a) All time
9 during which an employee is required to be on duty or to be on the
10 employer’s premises or at a prescribed workplace and (b) all time during
11 which an employee is suffered or permitted to work whether or not he is
12 required to do so. Thus, working time is not limited to the hours spent in
13 active productive labor, but includes time given by the employee to the
14 employer even though part of the time may be spent in idleness. Some of
15 the hours spent by employees, under certain circumstances... in meal
16 periods and rest periods are regarded as working time and some are not.
17 The governing principles are discussed in part 785 of this chapter
18 (interpretative bulletin on “hours worked”) and part 790 of this chapter
19 (statement of effect of Portal-to-Portal Act of 1947). ...
20

21 29 C.F.R. § 778.223
22

23 The United States Supreme Court originally stated that employees subject
24 to the act must be paid for all time spent in “physical or mental exertion
25 (whether burdensome or not) controlled or required by the employer and
26 pursued necessarily and primarily for the benefit of the employer and his
27 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
28 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 be no exertion at all and that all hours are hours worked which the
2 employee is required to give his employer, that “an employer, if he
3 chooses, may hire a man to do nothing, or to do nothing but wait for
4 something to happen. Refraining from other activity often is a factor of
5 instant readiness to serve, and idleness plays a part in all employments in
6 a stand-by capacity. Readiness to serve may be hired, quite as much as
7 service itself, and time spent lying in wait for threats to the safety of the
8 employer’s property may be treated by the parties as a benefit to the
9 employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*
10 *Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time
11 during which an employee is necessarily required to be on the employer’s
12 premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens*
13 *Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
14 the rule except to provide an exception for preliminary and postliminary
15 activities. See Section 785.34.

16
17 29 C.F.R. § 785.7.

18
19 Rest periods of short duration, running from 5 minutes to about 20
20 minutes, are common in industry. They promote the efficiency of the
21 employee and are customarily paid for as working time. They must be
22 counted as hours worked. Compensable time of rest periods may not be
23 offset against other working time such as compensable waiting time or on-
24 call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,
25 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.
26 Cal. 1945))

27
28 29 C.F.R. § 785.18.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1
2 Bona fide meal periods are not worktime. Bona fide meal periods do not
3 include coffee breaks or time for snacks. These are rest periods. The
4 employee must be completely relieved from duty for the purposes of
5 eating regular meals. Ordinarily 30 minutes or more is long enough for a
6 bona fide meal period. A shorter period may be long enough under special
7 conditions. The employee is not relieved if he is required to perform any
8 duties, whether active or inactive, while eating. For example, an office
9 employee who is required to eat at his desk or a factory worker who is
10 required to be at his machine is working while eating. *Culkin v. Glenn L.*
11 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d
12 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
13 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
14 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
15 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
16 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton*
17 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.
18 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
19 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
20 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
21 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))
22

23 29 C.F.R. § 785.19. Healthcare employees who were required to wear pagers and respond
24 to patient emergencies during meal breaks were held entitled to payment from their
25 employer for meal breaks because their employer had not fully relieved them of their
26 responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS
27 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016
28 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 meal break given that they had to stay at the facility and be available to respond to requests
2 to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988
3 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the
4 Fair Labor Standards Act where they alleged that they were not paid for meal periods but
5 were required to remain within a certain area, respond to emergencies and citizen
6 requests, and remain accessible).

7
8 Notwithstanding any other provision of this order, employees in the health
9 care industry who work shifts in excess of eight (8) total hours in a
10 workday may voluntarily waive their right to one of their two meal
11 periods. In order to be valid, any such waiver must be documented in a
12 written agreement that is voluntarily signed by both the employee and the
13 employer. The employee may revoke the waiver at any time by providing
14 the employer at least one day's written notice. The employee shall be fully
15 compensated for all working time, including any on-the-job meal period,
16 while such a waiver is in effect.

17
18 Wage Order 5, § 11(D).

19 43. In relevant part, In relevant part, California Labor Code § 512 states:

20
21 An employer shall not employ an employee for a work period of
22 more than five hours per day without providing the employee with
23 a meal period of not less than 30 minutes, except that if the total
24 work period per day of the employee is no more than six hours, the
25 meal period may be waived by mutual consent of both the
26 employer and employee.

27
28 An employer shall not employ an employee for a work period of



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 more than 10 hours per day without providing the employee with
2 a second meal period of not less than 30 minutes, except that if the
3 total hours worked is no more than 12 hours, the second meal
4 period may be waived by mutual consent of the employer and the
5 employee only if the first meal period was not waived.
6

7 44. In relevant part, Section 11 of the Wage Order states:
8

9 **Meal Periods**
10

11 (A) No employer shall employ any person for a work period of
12 more than five (5) hours without a meal period of not less
13 than 30 minutes, except that when a work period of not
14 more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the
16 employee and the employee. Unless the employee is
17 relieved of all duty during a 30 minute meal period, the
18 meal period shall be considered an 'on duty' meal period
19 and counted as time worked. An 'on duty' meal period shall
20 be permitted only when the nature of the work prevents an
21 employee from being relieved of all duty and when by
22 written agreement between the parties an on-the-job paid
23 meal period is agreed to. The written agreement shall state
24 that the employee may, in writing, revoke the agreement at
25 any time.

26
27 (B) If an employer fails to provide an employee a meal period
28 in accordance with the applicable provisions of this Order,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 the employer shall pay the employee one (1) hour of pay at
2 the employee's regular rate of compensation for each work
3 day that the meal period is not provided.
4

5 45. In relevant part, California Labor Code § 226.7 states:
6

7 (b) An employer shall not require an employee to work during
8 a meal or rest period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the
10 Industrial Welfare Commission, the Occupational Safety
11 and Health Standards Board, or the Division of
12 Occupational Safety and Health.
13

14 (c) If an employer fails to provide an employee a meal period
15 or rest period in accordance with a state law, including, but
16 not limited to, an applicable statute or applicable
17 regulation, standard, or order of the Industrial Welfare
18 Commission, the Occupational Safety and Health
19 Standards Board, or the Division of Occupational Safety
20 and Health, the employer shall pay the employee one
21 additional hour of pay at the employee's regular rate of
22 compensation for each work day that the meal or rest
23 period is not provided.
24



25 SPIVAK LAW
26 EMPLOYEE RIGHTS

27 Mail:
28 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

25 46. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
27 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
28 to a second 30-minute meal period when they worked more than 10 hours in a workday.

1 47. Defendants intentionally failed to provide Plaintiff and the Class Members with
2 all required 30-minute duty free meal periods in accordance with the Wage Order.

3 48. At all relevant times, the Defendants failed to provide Garcia and all of the other
4 Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to
5 pay premium wages for days on which they failed to provide Garcia and all of the other Class
6 Members with meal periods as required by law. Due to the workload and failure to hire sufficient
7 staff members, the Defendants denied Garcia and the Class Members their 30-minute off-duty
8 meal period within the first five hours of work. The Defendants did not permit Garcia and the
9 Class Members working as support staff and in similar positions to take their meal unless there
10 was another employee present to cover for them. Therefore, most times, Garcia and the Class
11 Members were forced to forego their meal and rest breaks because there was no other employee
12 present to cover for them. At all relevant times, the Defendants did not hire sufficient staff to
13 allow Garcia and the Class Members to take their timely meal and rest breaks. However,
14 Defendants required Garcia and the Class Members to clock-out within the first five hours of
15 work for meal breaks and continue working while clocked-out. In the event that the Class
16 Members did take their meal periods, they were required to monitor their personal mobile phones
17 (Teams application) at all times for work purposes. Furthermore, at all relevant times, the
18 Defendants required Garcia and the Class Members to remain on site premises throughout their
19 work shifts. Therefore, at all relevant times, Garcia and the Class Members were denied their
20 uninterrupted, off-duty meal periods.

21 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times
22 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
23 which resulted in Defendants not providing the and the Class Members with all off-duty meal
24 periods required by California law.

25 50. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
26 suffered damages in amounts subject to proof to the extent they were not paid additional wages
27 owed for all meal periods not provided to them.

28 51. By reason of the above, Plaintiff and the Class Members are entitled to premium



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 wages for workdays in which one or more meal periods were not provided to them pursuant to
2 California Labor Code § 226.7.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

5 **Lab. Code § 226.7**

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

7 52. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

8 53. At all relevant times during the applicable limitations period, Plaintiff and the
9 Class Members have been employees of Defendants and entitled to the benefits and protections
10 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

11 54. In relevant part, California Labor Code § 1198 states:

12
13 The maximum hours of work and the standard conditions of labor
14 fixed by the commission shall be the maximum hours of work and
15 the standard conditions of labor for employees. The employment
16 of any employee for longer hours than those fixed by the order or
17 under conditions of labor prohibited by the order is unlawful.

18
19 55. In relevant part, Section 12 of the Wage Order states:

20
21 **Rest Periods**

22
23 (A) Every employer shall authorize and permit all employees
24 to take rest periods, which insofar as practicable shall be in the
25 middle of each work period. The authorized rest period time shall
26 be based on the total hours worked daily at the rate of ten (10)
27 minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 whose total daily work time is less than three and one-half (3 1/2)
2 hours. Authorized rest period time shall be counted as hours
3 worked for which there shall be no deduction from wages.
4

5 (B) If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this Order, the
7 employer shall pay the employee one (1) hour of pay at the
8 employee's regular rate of compensation for each work day that
9 the rest period is not provided.
10

11 56. In relevant part, California Labor Code § 226.7 states:
12

13 (b) An employer shall not require an employee to work during
14 a meal or rest period mandated pursuant to an applicable
15 statute, or applicable regulation, standard, or order of the
16 Industrial Welfare Commission, the Occupational Safety
17 and Health Standards Board, or the Division of
18 Occupational Safety and Health.
19

20 (c) If an employer fails to provide an employee a meal period
21 or rest period in accordance with a state law, including, but
22 not limited to, an applicable statute or applicable
23 regulation, standard, or order of the Industrial Welfare
24 Commission, the Occupational Safety and Health
25 Standards Board, or the Division of Occupational Safety
26 and Health, the employer shall pay the employee one
27 additional hour of pay at the employee's regular rate of
28 compensation for each work day that the meal or rest



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

period is not provided.

57. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

58. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

59. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

60. At all relevant times, due to the workload and failure to hire sufficient staff members Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Furthermore, at all relevant times, the Defendants required Garcia and the Class Members to remain on site premises throughout their work shifts. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

61. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

62. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

1 owed for all rest breaks not provided to them.

2 63. By reason of the above, Plaintiff and the Class Members are entitled to premium
3 wages for workdays in which one or more rest breaks were not provided to them pursuant to
4 California Labor Code § 226.7.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **Lab. Code § 2802**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 64. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

13 66. California Labor Code § 1198 prohibits employers from employing their
14 employees under conditions prohibited by the Wage Order.

15 67. At all relevant times, Defendants required Plaintiff and the Class Members to incur
16 certain business expenses in the course of performing their duties.

17 68. As described above, the Defendants required Garcia and all of the other Class
18 Members to incur certain business expenses in the course of performing their duties. The
19 Defendants required Garcia and all the other Class Members to supply mobile phones to perform
20 their job duties. The Defendants required Garcia and all of the other Class Members to use the
21 Teams application on a daily basis in the course of their work, to communicate and receive
22 directions from the Defendants. However, the Defendants did not provide these mobile phones or
23 other devices with the Teams application and did not reimburse Garcia and the other Class
24 Members for these items. At all relevant times, the Defendants required Garcia and the Class
25 Members to travel in their personal automotive vehicles between site locations each day, though
26 they did not reimburse them for all of the mileage they incurred. Therefore, the Defendants failed
27 to reimburse Garcia and the Class Members for all mileage expenses. Furthermore, on several
28 occasions, Garcia and the Class Members were required to purchase groceries for the clients,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

1 which would cost from \$40 to \$50, however, the Defendants did not provide these items and did
2 not reimburse Garcia and the other Class Members for these items.

3 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
6 during the course of performing their duties.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

9 **Lab. Code § 226**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

11 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 71. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
13 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
14 statement showing:

15 A. Gross wages earned;

16 B. Total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

19 C. The number of piece rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis;

21 D. All deductions, provided that all deductions made on written orders of the
22 Employee may be aggregated and shown as one item;

23 E. Net wages earned;

24 F. The inclusive dates of the period for which the employee is paid;

25 G. The name of the employee and his or her social security number, except
26 that by January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown on the itemized
28 statement;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

1 H. The name and address of the legal entity that is the employer; and

2 I. All applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 72. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
5 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
6 the employer fails to provide accurate and complete information as required by California Labor
7 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
8 alone one or more of the following:

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

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

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

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

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

20 73. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
21 means a reasonable person would be able to readily ascertain the information without reference
22 to other documents or information.

23 74. As alleged herein, at all relevant times during the applicable limitations period,
24 Defendants violated California Labor Code section 226 because they did not properly and
25 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
26 the corresponding number of hours worked at each rate by the employee and other requirements
27 of California Labor Code section 226. Defendants failed to state in the wage statements they
28 issued to Plaintiff and the other Class Members all their hours worked and wages earned,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

1 including, but not limited to, regular and overtime wages for work they performed off-the-clock
2 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
3 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
4 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
5 Members that state all minimum wages earned, all regular wages earned, all meal period premium
6 wages earned, all rest break premium wages earned.

7 75. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

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

21 **SIXTH CAUSE OF ACTION**

22 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

23 **(Lab. Code §§ 201, 202, and 203)**

24 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

25 77. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 78. At all relevant times during the applicable limitations period, Plaintiffs and the
27 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
28 of California Labor Code §§ 201, 202, and 203, and the Wage Order.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 of the Business and Professions Code §§ 17200, *et seq.*

2 87. The unlawful conduct of Defendants alleged herein amount to and constitutes
3 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
4 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
5 gained a competitive advantage over other comparable companies doing business in California
6 that comply with their legal obligations to compensate employees for all earned wages.

7 88. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
8 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
9 Members were deprived of minimum wages, regular wages, missed meal period premium wages,
10 missed rest period premium wages, mileage expenses, phone expenses, and comparable money
11 and property.

12 89. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
13 Class Members are entitled to restitution of all monies rightfully belonging to them that
14 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
15 practices.

16 90. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
17 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
18 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **Lab.Code §§ 2698, *et seq.***

22 **(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,**
23 **against all Defendants)**

24 91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 92. The "Aggrieved Employees" are all members of the Class defined above who
26 Defendants employed during the period beginning April 3, 2023, and ending on the date that final
27 judgment is entered in this action.

28 93. Labor Code § 204 states



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

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

10 (b) (1) Notwithstanding any other provision of this section, all wages
11 earned for labor in excess of the normal work period shall be paid no later than the
12 payday for the next regular payroll period.
13

14 (2) An employer is in compliance with the requirements of subdivision (a) of
15 Section 226 relating to total hours worked by the employee, if hours worked in
16 excess of the normal work period during the current pay period are itemized as
17 corrections on the paystub for the next regular pay period. Any corrections set out
18 in a subsequently issued paystub shall state the inclusive dates of the pay period
19 for which the employer is correcting its initial report of hours worked.
20

21 (c) However, when employees are covered by a collective bargaining
22 agreement that provides different pay arrangements, those arrangements shall
23 apply to the covered employees.
24

25 (d) The requirements of this section shall be deemed satisfied by the payment
26 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
27 more than seven calendar days following the close of the payroll period.
28



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

1 94. Defendants paid wages to employees on regular intervals. Defendants, however,
2 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
3 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
4 intervals for all wages earned and all hours worked.

5 95. During the applicable time period, Defendants violated California Labor Code §§
6 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

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

14 A. For violations of California Labor Code § 204, one hundred dollars
15 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
16 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
17 (penalty amounts established by California Labor Code § 210).

18 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
19 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
20 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
21 California Labor Code § 226.3).

22 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
23 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
24 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
25 established by California Labor Code § 558).

26 D. For violations of California Labor Code § 1174, five hundred dollars
27 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
28 amounts established by Labor Code § 1174.5).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- FI
Los Angeles, CA 90405

1 E. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
3 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
4 (regardless of whether the initial violations were intentionally committed) (penalty amounts
5 established by California Labor Code § 1197.1).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code §
10 2699(f)(2)).

11 98. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated April 3, 2024, Plaintiff filed written notice online with the
13 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
14 to Defendants of the specific provisions of the California Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. A true and correct copy
16 of the notice to the LWDA dated April 3, 2024, is attached as **Exhibit A**. Plaintiff submitted his
17 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
18 within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA
19 will provide written notice to Plaintiff informing him that it does not intend to investigate these
20 allegations.

21 99. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
23 connection with their claims for civil penalties.

24 **V. PRAYER FOR RELIEF**

25 100. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
26 relief and judgment against Defendants as follows:

27 A. An order that the action be certified as a class action with respect to
28 Plaintiff’s claims for violations of California law;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

- 1 B. An order that Plaintiff be appointed class representative;
2 C. An order that counsel for Plaintiff be appointed class counsel;
3 D. Unpaid wages, including minimum, regular, overtime, double-time, split
4 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
5 time, and reporting time wages;
6 E. Liquidated damages;
7 F. Statutory penalties, including waiting time penalties;
8 G. Civil penalties;
9 H. Restitution;
10 I. Declaratory relief;
11 J. Actual damages;
12 K. Pre-judgment interest;
13 L. Costs of suit;
14 M. Reasonable attorneys' fees; and
15 N. Such other relief as the Court deems just and proper.

16 **VI. DEMAND FOR JURY TRIAL**

17 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
18 on all issues so triable.

19 Respectfully submitted,

20 THE SPIVAK LAW FIRM

21 Dated: June 10, 2024

22 By:



23 DAVID G. SPIVAK, Attorney for
24 Plaintiff, ALAN GARCIA, and all
25 others similarly situated



26 Mail:
27 8605 Santa Monica Bl
28 PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park E
25- Fl
Los Angeles, CA 90405

EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
1801 Century Park East 25th Fl Los Angeles CA 90067 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 3, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Alan Garcia / Elite Care, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Alan Garcia (hereafter “Garcia” or “Complainant”) provides notice that Elite Care, Inc. and related entities (collectively “the Elite Care Employers” or “the Employers”) violated his rights and those of all other individuals the Elite Care Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including support staff, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. On behalf of himself and all other Aggrieved Employees, Garcia hereby provides this notice to the Labor & Workforce Development Agency and the Elite Care Employers and their agents and representatives.

At all relevant times, the Elite Care Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Garcia and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately December 13, 2022, the Elite Care Employers began to employ Garcia in Huntington Beach in the position of hourly, non-exempt support staff. The Elite Care Employers continuously employed him in that capacity until on or about July 28, 2023, when his employment ended.

At all relevant times, the Elite Care Employers issued wages to Garcia and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Elite Care Employers classified Garcia and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Garcia and the Aggrieved Employees often worked five (5) to six (6) days in a workweek, and between eight (8) to twelve (12) hours per workday. At all relevant times, Garcia and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek.

At all relevant times, the Employers required Garcia and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, the Employers often required that Garcia and the Aggrieved Employees continue to work after they had clocked out for meal breaks or after the conclusion of their shifts, requiring them to complete tasks such as administering Pro Re Nata prescriptions (medicine taken as the circumstances arise), completing rounds (check-ups) on detoxing clients, documenting observations on a client portal (Kipu Health software) and taking out the trash. The Elite Care Employers failed to compensate Garcia and the Aggrieved Employees for this work performed off-the-clock.

At all relevant times, the Elite Care Employers failed to provide Garcia and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Elite Care Employers also failed to pay premium wages for days on which they failed to provide Garcia and all of the other Aggrieved Employees with meal periods as required by law. Due to the workload and failure to hire sufficient staff members, the Employers denied Garcia and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers did not permit Garcia and the Aggrieved Employees working as support staff and in similar positions to take their meal unless there was another employee present to cover for them. Therefore, most times, Garcia and the Aggrieved Employees were forced to forego their meal and rest

breaks because there was no other employee present to cover for them. At all relevant times, the Employers did not hire sufficient staff to allow Garcia and the Aggrieved Employees to take their timely meal and rest breaks. However, the Employers required Garcia and the Aggrieved Employees to clock-out within the first five hours of work for meal breaks and continue working while clocked-out. In the event that the Aggrieved Employees did take their meal periods, they were required to monitor their personal mobile phones (Teams application) at all times for work purposes. Furthermore, at all relevant times, the Employers required Garcia and the Aggrieved Employees to remain on site premises throughout their work shifts. Therefore, at all relevant times, Garcia and the Aggrieved Employees were denied their uninterrupted, off-duty meal periods.

At all relevant times, due to the workload and failure to hire sufficient staff members, the Elite Care Employers failed to authorize and permit Garcia and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Furthermore, at all relevant times, the Employers required Garcia and the Aggrieved Employees to remain on site premises throughout their work shifts. The Elite Care Employers also failed to pay premium wages for days on which they failed to authorize and permit Garcia and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Elite Care Employers required Garcia and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Elite Care Employers required Garcia and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. The Elite Care Employers required Garcia and all of the other Aggrieved Employees to use the Teams application on a daily basis in the course of their work, to communicate and receive directions from the Employers. However, the Elite Care Employers did not provide these items and did not reimburse Garcia and the other Aggrieved Employees for these items. At all relevant times, the Employers required Garcia and the Aggrieved Employees to travel in their personal automotive vehicles between site locations each day, though they did not reimburse them for all of the mileage they incurred. Therefore, the Elite Care Employers failed to reimburse Garcia and the Aggrieved Employees for all mileage expenses. Furthermore, on several occasions, Garcia and the Aggrieved Employees were required to purchase groceries for the clients, which would cost from \$40 to \$50, however, the Elite Care Employers did not provide these items and did not reimburse Garcia and the other Aggrieved Employees for these items.

At all relevant times, the Elite Care Employers failed to issue to Garcia and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Elite Care Employers knowingly and intentionally failed to state on the wage statements they issued to Garcia and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned.

The Elite Care Employers also failed to timely pay Garcia and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Elite Care Employers failed to maintain accurate employee records of Garcia and all of the other Aggrieved Employees.

For the reasons stated herein, Garcia alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Elite Care Employers failed to pay Garcia and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to minimum and regular pay due to off-the-clock work;
- (b) The Elite Care Employers failed to provide Garcia and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Elite Care Employers failed to authorize and permit Garcia and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Elite Care Employers failed to compensate Garcia and all of the other Aggrieved Employees at one hour's pay for each day in which the Elite Care Employers failed to provide them with one or more meal periods as required by law;

- (e) The Elite Care Employers failed to compensate Garcia and all of the other Aggrieved Employees at one hour's pay for each day in which the Elite Care Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Elite Care Employers failed to indemnify Garcia and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Elite Care Employers knowingly and intentionally failed to provide Garcia and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Elite Care Employers willfully failed to timely pay Garcia and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Elite Care Employers and when their employment ended;
- (i) The Elite Care Employers failed to maintain accurate employment records pertaining to Garcia and all of the other Aggrieved Employees.

Accordingly, Garcia now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Elite Care Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to include

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Elite Care Employers, Garcia, and all of the Aggrieved Employees were covered by the Wage Order because the Elite Care Employers operated, and Garcia, and all of the Aggrieved Employees, worked for one or more rehabilitation facility. Accordingly, Garcia and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages for All Hours Worked at The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Within the healthcare industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...” 29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that

there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.” 29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff’d 194 F. 2d 493 (C.A. 6,

1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who are required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, the Elite Care Employers failed to compensate Garcia and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, and regular wages for all hours they

worked at the correct rates of pay. At all relevant times, the Employers required Garcia and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, the Employers often required that Garcia and the Aggrieved Employees continue to work after they had clocked out for meal breaks or after the conclusion of their shifts, requiring them to complete tasks such as administering Pro Re Nata prescriptions (medicine taken as the circumstances arise), completing rounds (check-ups) on detoxing clients, documenting observations on a client portal (Kipu Health software) and taking out the trash. The Elite Care Employers failed to compensate Garcia and the Aggrieved Employees for this work performed off-the-clock. Accordingly, Garcia now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

///

///

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.” Within the healthcare industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

“...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...” 29 C.F.R. § 778.223

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda*

Local No. 123 (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.” 29 C.F.R. § 785.7.

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), *aff’d* 197 F. 2d 981 (C.A. 8, 1952), *cert. denied* 344 U.S. 888 (1952); *Thompson v. Stock &*

Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

“Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.”

Wage Order 5, § 11(D).

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

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

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health.

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

At all relevant times, the Elite Care Employers failed to provide Garcia and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Elite Care Employers also failed to pay premium wages for days on which they failed to provide Garcia and all of the other Aggrieved Employees with meal periods as required by law. Due to the workload and failure to hire sufficient staff members, the Employers denied Garcia and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers did not permit Garcia and the Aggrieved Employees working as support staff and in similar positions to take their meal unless there was another employee present to cover for them. Therefore, most times, Garcia and the Aggrieved Employees were forced to forego their meal and rest breaks because there was no other employee present to cover for them. At all relevant times, the Employers did not hire sufficient staff to allow Garcia and the Aggrieved Employees to take their timely meal and rest breaks. However, the Employers required Garcia and the Aggrieved Employees to clock-out within the first five hours of work for meal breaks and continue working while clocked-out. In the event that the Aggrieved Employees did take their meal periods, they were required to monitor their personal mobile phones (Teams application) at all times for work purposes. Furthermore, at all relevant times, the Employers required Garcia and the Aggrieved Employees to remain on site premises throughout their work shifts. Therefore, at all relevant times, Garcia and the Aggrieved Employees were denied their uninterrupted, off-duty meal periods. Accordingly, Garcia now seeks civil penalties for these Labor Code violations that the Elite Care Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily

work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

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

The Elite Care Employers failed to authorize and permit Garcia and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Elite Care Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Elite Care Employers failed to pay Garcia and all of the other Aggrieved Employees premium wages on workdays the Elite Care Employers failed to provide Garcia and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Furthermore,

at all relevant times, the Employers required Garcia and the Aggrieved Employees to remain on site premises throughout their work shifts. Accordingly, Garcia now seeks civil penalties for these Labor Code violations that the Elite Care Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Elite Care Employers required Garcia and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Elite Care Employers required Garcia and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. The Elite Care Employers required Garcia and all of the other Aggrieved Employees to use the Teams application on a daily basis in the course of their work, to communicate and receive directions from the Employers. However, the Elite Care Employers did not provide these items and did not reimburse Garcia and the other Aggrieved Employees for these items. At all relevant times, the Employers required Garcia and the Aggrieved Employees to travel in their personal automotive vehicles between site locations each day, though they did not reimburse them for all of the mileage they incurred. Therefore, the Elite Care Employers failed to reimburse Garcia and the Aggrieved Employees for all mileage expenses. Furthermore, on several occasions, Garcia and the Aggrieved Employees were required to purchase groceries for the clients, which would cost from \$40 to \$50, however, the Elite Care Employers did not provide these items and did not reimburse Garcia and the other Aggrieved Employees for these items. The Employers failed to indemnify Garcia and the Aggrieved Employees for these expenses both during and after their employment ended. Accordingly, Garcia seeks civil penalties for these Labor Code violations that the Elite Care Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

// /

// /

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Elite Care Employers violated Labor Code section 226 because they did not properly and accurately itemize

each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Elite Care Employers failed to state in the wage statements they issued to Garcia and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Elite Care Employers knowingly and intentionally failed to state on the wage statements they issued to Garcia and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned.

Accordingly, Garcia seeks civil penalties for the Labor Code violations that the Elite Care Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Elite Care Employers failed to compensate Garcia and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, unprovided meal period premium wages, unprovided rest break premium wages, at the intervals stated above. As a result, the Elite Care Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Garcia now seeks civil penalties for the Labor Code violations that the

Elite Care Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Elite Care Employers failed to pay Garcia and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Garcia, including minimum wages, regular wages, unprovided meal period premium wages, unprovided rest break premium wages. By failing to pay Garcia and all of the other Aggrieved Employees as set forth above at the end of employment, the Elite Care Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Garcia seeks civil penalties from the Elite Care Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record

of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

The Elite Care Employers failed to compensate Garcia and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned. As a result, the Elite Care Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Garcia and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Garcia seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

// /

// /

// /

// /

// /

// /

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Alan Garcia will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
David@spivaklaw.com
cc: Mr. Alan Garcia

Mr. Walter L. Haines Esq.
United Employees Law Group
8605 Santa Monica Bl.
PMB 63354
West Hollywood CA 90069
walter@uelglaw.com

Elite Care, Inc.
c/o Agent for service of process
Northwest Registered Agent, Inc.
2108 N Street Ste N
Sacramento CA, 95816-5712

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1801 Century Park East, 25th
Fl, Los Angeles, CA 90067.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United States
Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9 On Monday, June 10, 2024, I served the foregoing document described
10 as **PLAINTIFF'S FIRST AMENDED COMPLAINT** interested parties by placing a true and
correct copy thereof enclosed in a sealed envelope, with postage fully prepaid,
11 addressed as follows:

12 Paul M. Teinert, Esq.
13 Kaitlin Hall
Janelle Launi
14 ROSS, WOLCOTT, TEINERT & PROUT LLP
3151 Airway Ave., Building S-1
Costa Mesa, CA 92626
15 PMT@RossLLP.com
kjh@rossllp.com
16 ljlauri@rossllp.com

17
18 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with other
19 correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los
Angeles, CA 90067.

20 (BY EMAIL) I caused the documents to be sent to the persons at the
21 electronic service addresses listed above from my electronic service address
nora@spivaklaw.com.

22 EXECUTED on Monday, June 10, 2024, at Burbank, California.

23 XXXX (State) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25 (Federal) I declare that I am employed in the office of a member of the
26 bar of this court at whose direction the service was made.

27 

NORA GREER