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Kern County Superior Court
By Marina Mercado, Deputy

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

DIANA MORFIN and GABRIELA GARCIA,
individuals on behalf of themselves, the State of
California, as private attorneys general, and on
behalf of all others similarly situated,

Plaintiffs,

v.

DELANO DISTRICT SKILLED NURSING
FACILITY, a business of unknown formation;
and DOES 1 TO 50,

Defendants.

Case Number: BCV-24-101142

First Amended Class and PAGA
Representative Action Complaint For:

- 1.** Failure to Pay All Minimum Wages,
- 2.** Failure to Pay All Overtime Wages,
- 3.** Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
- 4.** Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
- 5.** Failure to Maintain Accurate Employment Records,
- 6.** Failure to Pay Wages Timely during Employment,
- 7.** Failure to Pay All Wages Earned and Unpaid at Separation,
- 8.** Failure to Furnish Accurate Itemized Wage Statements,
- 9.** Failure to Pay Sick Leave,

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- 10.** Violations of California’s Unfair
Competition Law (Bus. & Prof. Code, §§
17200–17210), and
- 11.** Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
(“PAGA”).

Demand for Jury Trial

1 Plaintiffs Diana Morfin and Gabriela Garcia (collectively “Plaintiffs”), on behalf of themselves,
2 the State of California, as private attorneys general, and all other similarly situated employees within
3 the State of California, complain and allege of defendants Delano District Skilled Nursing Facility and
4 Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from April 2, 2020 and
9 continuing into the present and ongoing. Defendants’ violations of California’s laws as described more
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiffs bring this class action on behalf of themselves and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiffs bring this action on behalf of themselves and the Class Members, as a class
15 action, against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to furnish accurate itemized wage statements,
- 24 I. Failure to fully pay all sick leave wages, and
- 25 J. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
26 Code, §§ 17200–17210).

27 5. This action is also a representative action brought pursuant to the California Labor Code
28 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698

1 through 2699.6.

2 6. The “PAGA Period” as used herein, is defined as the period from April 2, 2023, and
3 continuing into the present and ongoing.

4 7. This PAGA action is brought on behalf of Plaintiffs, the State of California as private
5 attorneys general, and on behalf of the following aggrieved employees: *All individuals who are or were*
6 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
7 “Aggrieved Employees”).

8 8. Plaintiffs are informed and believe and thereon allege that the California Industrial
9 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
10 4-2001 and/or 5-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.
11 (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Plaintiffs reserve the right to amend or modify the
12 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders
13 if additional applicable wage orders are discovered in litigation.

14 **II. JURISDICTION & VENUE**

15 9. This Court has subject matter jurisdiction over all causes of action asserted herein
16 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
17 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
18 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
19 is subject to adjudication in the courts of the State of California.

20 10. This Court has personal jurisdiction over Defendants because Defendants have caused
21 injuries in the County of Kern and the State of California through their acts, and by their violation of
22 the California Labor Code and California state common law. Defendants transact millions of dollars of
23 business within the State of California. Defendants own, maintain offices, transact business, have an
24 agent or agents within the County of Kern, and/or otherwise are found within the County of Kern, and
25 Defendants are within the jurisdiction of this Court for purposes of service of process.

26 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
27 Code of Civil Procedure. Defendants operate within California and do business within Kern County,
28 California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all of Defendants’

1 employees identified above within Kern County and surrounding counties where Defendants may
2 remotely operate.

3 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
4 U.S.C. § 1332) as the amount in controversy for Plaintiffs' and the Class Members' claims, in
5 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
6 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
7 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
8 (28 U.S.C. § 1332, subd. (d)(4)(A).)

9 **III. THE PARTIES**

10 **A. PLAINTIFF**

11 13. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
12 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-exempt
13 hourly employees in the County of Kern.

14 14. Plaintiffs bring this action on behalf of themselves and the following class pursuant to
15 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
16 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

17 15. Plaintiffs also bring this action on behalf of themselves and the State of California, as
18 private attorneys general, and on behalf of the following group of aggrieved employees: *All individuals*
19 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
20 *Period* (the "Aggrieved Employees").

21 16. The Class Members, at all times pertinent hereto, are or were employees of Defendants
22 during the relevant statutory period.

23 **B. DEFENDANTS**

24 17. Plaintiffs are informed and believe and thereon allege that Defendants were authorized
25 to and doing business in Kern County and is and/or was the legal employer of Plaintiffs and the other
26 Class Members during the applicable statutory periods. Plaintiffs, the other Class Members, and the
27 Aggrieved Employees were, and are, subject to Defendants' policies and/or practices complained of
28 herein and have been deprived of the rights guaranteed to them by: California Labor Code sections

201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; California Business and Professions Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11050).

18. Plaintiffs are informed and believe, and based thereon allege, that during the Class Period, Defendants did (and continue to do) business in the State of California, County of Kern. Defendants’ operations are headquartered in Kern County.

19. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs, the other Class Members, and the Aggrieved Employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

20. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned herein, Defendants were and/or are the employers of Plaintiffs, the other Class Members, and the Aggrieved Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, representatives, and employees of each and every one of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, representation, and employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

21. Plaintiffs are further informed, and believe, and thereon allege, that at all times mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there existed and now exists a unity of interest and ownership between them such that the individuality and separateness of each of them has ceased. Plaintiffs are further informed, and believe, and thereon allege, that at all times mentioned herein, that Defendants, and each of them, have been and now are mere

1 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,
2 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
3 identities as the entities responsible for their ownership, management, and financial interests.

4 22. Plaintiffs are further informed, and believe, and thereon allege, that at all times
5 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
6 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
7 joint venture, partnership, and common enterprise. Further, Plaintiffs are informed, and believe, and
8 thereon allege, that all Defendants were joint employers for all purposes of Plaintiffs, the other Class
9 Members, and the Aggrieved Employees.

10 **IV. COMMON FACTS & ALLEGATIONS**

11 23. Plaintiffs, the Class Members, and the Aggrieved Employees are, and were, at all
12 relevant times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal
13 periods, and the other claims alleged in this complaint.

14 24. Specifically, Plaintiffs, the Class Members, and the Aggrieved Employees were
15 employed by Defendants within the statutory Class Period, working as hourly, non-exempt certified
16 nursing assistant for Defendants.

17 **A. MINIMUM WAGE VIOLATIONS**

18 25. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
19 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
20 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a
21 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable
22 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
23 (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Labor Code section 1198 makes unlawful the employment
24 of an employee under conditions that the IWC Wage Orders prohibit.

25 26. These minimum wage standards apply to each hour that employees work. Therefore, an
26 employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging
27 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above
28 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

1 27. Here, Defendants failed to fully conform their pay practices to the requirements of the
2 law during the relevant statutory periods. Plaintiffs, the Class Members, and the Aggrieved Employees
3 were not compensated for all hours worked including, but not limited to, all hours they were subject to
4 the control of Defendants and/or suffered or permitted to work under the California Labor Code and
5 the Applicable Wage Orders.

6 28. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
7 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
8 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
9 due and interest thereon.

10 29. When employees, such as Plaintiffs, the Class Members, and the Aggrieved Employees,
11 are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum
12 wages for the time which they received no compensation. (See *Sillah v. Command International*
13 *Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime
14 could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid
15 less than minimum wage].)

16 30. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
17 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
18 damages, as follows:

19 (1) “For any initial violation that is intentionally committed, one hundred
20 dollars (\$100) for each underpaid employee for each pay period for
21 which the employee is underpaid.”

22 (2) “For each subsequent violation for the same specific offense, two
23 hundred fifty dollars (\$250) for each underpaid employee for each pay
24 period for which the employee is underpaid regardless of whether the
25 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
26 (a).)

27 31. As set forth above, Defendants failed to fully compensate Plaintiffs, the Class Members,
28 and the Aggrieved Employees for all minimum wages. Accordingly, Plaintiffs, the Class Members,

1 and the Aggrieved Employees are entitled to recover liquidated damages for violations of Labor Code
2 section 1197.1.

3 32. Based upon these same factual allegations, Plaintiffs, the Class Members, and the
4 Aggrieved Employees are likewise entitled to penalties under Labor Code sections 1199.

5 **B. OVERTIME VIOLATIONS**

6 33. Labor Code section 510 requires employers to compensate employees who work more
7 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
8 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
9 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
10 employees at no less than twice the regular rate of pay when an employee works more than twelve
11 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
12 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

13 34. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class
14 Members could not then agree and cannot now agree to work for a lesser wage than the amount
15 provided by Labor Code sections 510 or the Applicable Wage Orders.

16 35. Here, Defendants violated their duty to accurately and completely compensate the Class
17 Members for all overtime worked. Plaintiffs, the Class Members, and the Aggrieved Employees
18 periodically worked hours that entitled them to overtime compensation under the law but were not fully
19 compensated for those hours.

20 36. Moreover, during the relevant statutory periods, Defendants had a policy and practice
21 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
22 Defendants paid overtime wages to Plaintiffs, the Class Members, and the Aggrieved Employees,
23 Defendants failed to include all compensation when calculating the regular rate of pay used in overtime
24 calculations and when paying overtime.

25 37. For instance, Plaintiffs, the Class Members, and the Aggrieved Employees would often
26 receive, along with their hourly rates of pay for their working hours, additional remuneration and/or
27 non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for Plaintiffs, the
28 Class Members, and the Aggrieved Employees without factoring into the regular rate of pay all other

1 non-hourly pay earnings received during the pay period. As a result, Plaintiffs, the Class Members, and
2 the Aggrieved Employees were underpaid overtime wages when they worked in excess of eight hours
3 in any workday and/or forty hours in a workweek when such additional forms of remuneration were
4 earned. By its practice of periodically requiring Plaintiffs, the Class Members, and the Aggrieved
5 Employees to work in excess of eight hours in a workday and/or forty hours in a workweek without
6 compensating them at the rate of one and one-half (1½) their regular rate of pay, Defendants willfully
7 violated the provisions of Labor Code sections 510, 1194, and 1199.

8 38. These actions were and are in clear violation of California’s overtime laws as set forth
9 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
10 §§ 11040, 11050.) As a result of Defendants’ faulty policies and practices, Plaintiffs, the Class
11 Members, and the Aggrieved Employees were not compensated for all hours worked or paid accurate
12 overtime compensation.

13 **C. REST BREAK VIOLATIONS**

14 39. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
15 were and are required to provide Plaintiffs, the Class Members, and the Aggrieved Employees with
16 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
17 worked. Under the Applicable Wage Orders, an employer must authorize and permit all employees to
18 take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of
19 Regs., tit. 8, §§ 11040, 11050.)

20 40. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
21 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
22 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
23 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
24 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
25 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
26 factor in all nondiscretionary payments for work performed by the employee, including non-
27 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
28 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage

1 Orders set when and for how long the rest period must take place and the Labor Code establishes that
2 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
3 their employees when employers fail to provide rest periods.

4 41. The California Supreme Court has held that, during required rest periods, “employers
5 must relieve their employees of all duties and relinquish any control over how employees spend their
6 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
7 control over employees during rest periods requires that employees be “free to leave the employer’s
8 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
9 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
10 policy:

11 “An employer is required to authorize and permit the amount of rest break time
12 called for under the wage order for its industry. If it does not—if, for example,
13 it adopts a uniform policy authorizing and permitting only one rest break for
14 employees working a seven-hour shift when two are required—it has violated
15 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
16 Cal.4th 1004, 1033.)

17 42. Here, Defendants periodically did not permit Plaintiffs, the Class Members, and the
18 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
19 required by Labor Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See
20 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
21 employers must relieve employees of all duties and relinquish control over how employees spend their
22 time.”].) At all relevant times, Plaintiffs, the Class Members, and the Aggrieved Employees were
23 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
24 four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
25 policies/practices. Plaintiffs, the Class Members, and the Aggrieved Employees were often expected
26 and required to continue working through rest periods to meet the expectations Defendants and finish
27 the workday. In some cases when Plaintiffs, the Class Members, and the Aggrieved Employees worked
28 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.

1 As a result, Plaintiffs, the Class Members, and the Aggrieved Employees were periodically unable to
2 take compliant rest periods.

3 43. In such cases where Defendants did not offer Plaintiffs, the Class Members, and the
4 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court may not
5 conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health*
6 *Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal
7 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker*
8 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest
9 break that was required by law but never authorized; if a break is not authorized, an employee has no
10 opportunity to decline to take it.”].)

11 44. In addition to failing to authorize and permit compliant rest periods, Plaintiffs, the Class
12 Members, and the Aggrieved Employees were not compensated with one hour’s worth of pay at their
13 regular rate of compensation when they were not provided with a compliant rest period in accordance
14 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
15 226.7 and the Applicable Wage Orders.

16 45. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
17 non-exempt employees, rest period premiums and penalties.

18 **D. MEAL BREAK VIOLATIONS**

19 46. Labor Code section 512 and the Applicable Wage Orders require employers to provide
20 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
21 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
22 more than five hours per day without providing the employee with a meal period of not less than 30
23 minutes”]; Cal. Code of Regs., tit. 8, §§ 11040, 11050 [“No employer shall employ any person
24 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
25 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
26 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
27 employ an employee for a work period of more than 10 hours per day without providing the employee
28 with a second meal period of not less than 30 minutes”].)

1 47. “An on-duty meal period is permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
3 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
4 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
5 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
6 have “found that the nature of the work exception applies: (1) where the work has some particular
7 external force that requires the employee to be on duty at all times, and (2) where the employee is the
8 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
9 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
10 to determine whether the nature of the work prevents an employee from being relieved before requiring
11 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
12 p. 946.)

13 48. Here, Plaintiffs, the Class Members, and the Aggrieved Employees were never asked to
14 sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
15 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
16 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
17 provide compliant off-duty meal periods within the first five hours of work for Plaintiffs, the Class
18 Members, and the Aggrieved Employees.

19 49. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
20 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
21 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
22 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
23 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
24 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
25 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
26 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
27 *Court*, *supra*, 53 Cal.4th at p. 1033.)
28

1 50. During the applicable statutory periods here, Plaintiffs, the Class Members, and the
2 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of
3 at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
4 Defendants’ uniform meal period policies and practices, Plaintiffs, the Class Members, and the
5 Aggrieved Employees were often not permitted to take compliant first meal periods before the end of
6 the fifth hour of work. Plaintiffs, the Class Members, and the Aggrieved Employees were also
7 periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
8 violated Labor Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or
9 permit Plaintiffs, the Class Members, and the Aggrieved Employees to receive thirty-minute, off-duty
10 meal periods within the first five hours of their shifts.

11 51. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
12 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
14 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
15 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
16 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
17 Regs., tit. 8, §§ 11040, 11050 [“If an employer fails to provide an employee a meal period in accordance
18 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
19 at the employee’s regular rate of compensation for each workday that the meal period is not
20 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
21 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
22 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
23 (2021) 11 Cal.5th 858, 878.)

24 52. Accordingly, for each day that Plaintiffs, the Class Members, and the Aggrieved
25 Employees did not receive compliant meal periods, they were and are entitled to receive meal period
26 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants,
27 however, failed to pay Plaintiffs, the Class Members, and the Aggrieved Employees applicable meal
28 period premiums for many workdays that the employees did not receive a compliant meal period. Thus,

1 Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

2 53. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
3 non-exempt employees, meal period premiums and penalties.

4 **E. UNTIMELY WAGES DURING EMPLOYMENT**

5 54. Labor Code section 204 expressly requires employers who pay employees on a weekly,
6 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
7 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
8 Labor Code section 204 subject to a penalty of:

9 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
10 pay each employee.

11 “(2) For each subsequent violation, or any willful or intentional violation, two
12 hundred dollars (\$200) for each failure to pay each employee, plus 25
13 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
14 (a).)

15 55. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
16 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
17 subd. (a).)

18 56. Due to Defendants’ failure to pay Plaintiffs, the Class Members, and the Aggrieved
19 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
20 timely pay the Class Members within seven calendar days following the close of payroll in accordance
21 with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC*
22 (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist.
23 LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code
24 sections 203 and 204].)

25 **F. UNTIMELY WAGES AT SEPARATION**

26 57. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
27 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
28 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result

1 of Defendants' failure to pay the Class Members for the wages described above, along with rest and
2 meal break premiums, Defendants violated and continue to violate Labor Code section 203.

3 58. Due to Defendants' faulty pay policies, those Class Members whose employment with
4 Defendants concluded were not compensated for each and every hour worked at the appropriate rate.
5 Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time
6 of termination within at least seventy-two hours of their resignation and have failed to pay those sums
7 for thirty days thereafter.

8 **G. WAGE STATEMENT VIOLATIONS**

9 59. Defendants also failed to provide accurate itemized wage statements in accordance with
10 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
11 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
12 statement in writing showing:

- 13 (1) The gross wages earned;
- 14 (2) The total hours worked by the employee;
- 15 (3) The number of piece-rate units earned and any applicable piece rate if
16 the employee is paid on a piece rate basis;
- 17 (4) All deductions, provided that all deductions made on written orders of
18 the employee may be aggregated and shown as one item;
- 19 (5) The net wages earned;
- 20 (6) The inclusive dates of the period for which the employee is paid;
- 21 (7) The name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number;
- 24 (8) The name and address of the legal entity that is the employer; and
- 25 (9) All applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the
27 employee.
28

1 60. Due to Defendants' failure to pay Plaintiffs, the Class Members, and the Aggrieved
2 Employees properly as described above, the wage statements issued do not indicate the correct amount
3 of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
5 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

6 61. Defendants also failed to include the accrued sick hours on the wage statements
7 provided to the Class Members as required by Labor Code section 246, subdivision (i).

8 62. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
9 intentionally failed to provide Plaintiffs, the Class Members, and the Aggrieved Employees with
10 accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants
11 knew that they were not providing Plaintiffs, the Class Members, and the Aggrieved Employees with
12 wage statements required by California law but nevertheless failed to correct their unlawful practices
13 and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the
14 defendant knowingly and intentionally violated Labor Code section 226 because the “[d]efendant knew
15 that it was not providing total hours worked to plaintiff or other employees paid on commission” even
16 though it believed that employees paid solely on commission or commission and salary “are exempt
17 and therefore we do not record hours on a wage statement.”].)

18 **H. RECORDKEEPING VIOLATIONS**

19 63. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
20 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
21 part, as follows:

22 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
23 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
24 violation in an initial citation and one thousand dollars (\$1,000) per employee
25 for each violation in a subsequent citation, for which the employer fails to
26 provide the employee a wage deduction statement or fails to keep the records
27 required in subdivision (a) of Section 226. The civil penalties provided for in
28 this section are in addition to any other penalty provided by law.” (Lab. Code, §

226.3, emphasis added.)

64. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendants, to:

“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.” (Lab. Code, § 1174, subd. (d), emphasis added.)

65. As explained in detail above, Defendants failed to provide Plaintiffs, the Class Members, and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by Plaintiffs, the Class Members, and the Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

66. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees, including Plaintiffs, the Class Members, and the Aggrieved Employees, in violation of Labor Code section 1174, subdivision (d).

I. SICK PAY VIOLATIONS

67. Labor Code section 246 provides that every employee who works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour per every 30 hours worked, and must be paid out using the employees’ regular rate

1 of pay. (Lab. Code, § 246, subds. (b), (l).) The “regular rate of pay” for these purposes must factor in
2 all nondiscretionary payments for work performed by the employee, including non-discretionary
3 bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly rate.
4 (Lab. Code, § 246, subds. (l)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
5 858, 878.)

6 68. Here, Defendants employed Plaintiffs, the Class Members, and the Aggrieved
7 Employees for 30 or more days within a year from the commencement of employment. Defendants
8 nevertheless failed to fully pay Plaintiffs, the Class Members, and the Aggrieved Employees for all
9 sick pay that was lawfully earned and accrued.

10 69. By failing to fully pay accrued sick time, Defendants have underpaid Plaintiffs, the
11 Class Members, and the Aggrieved Employees and have violated California Labor Code provisions
12 including, but not limited to, section 246.

13 **V. CLASS ACTION ALLEGATIONS**

14 70. As mentioned above, Plaintiffs bring this action on behalf of themselves and the Class
15 Members pursuant to section 382 of the Code of Civil Procedure.

16 71. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
17 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiffs
18 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
19 The identity of such membership is readily ascertainable via inspection of Defendants’ employment
20 records.

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

25 A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
26 Members for all hours worked, including all minimum wages;

27 B. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
28 Members for all required overtime wages at the Class Members’ regular rate of pay;

1 C. Whether Defendants' rest period policies and practices afforded legally
2 compliant rest periods or compensation in lieu thereof;

3 D. Whether Defendants' meal period policies and practices afforded legally
4 compliant meal periods or compensation in lieu thereof;

5 E. Whether Defendants maintained accurate employment records;

6 F. Whether Defendants timely paid all wages during employment;

7 G. Whether Defendants timely paid all wages earned and unpaid at separation;

8 H. Whether Defendants furnished legally-compliant wage statements to the Class
9 Members pursuant to Labor Code section 226;

10 I. Whether Defendants fully paid all sick pay wages as required by Labor Code
11 section 246; and

12 J. Whether Defendants' violations of the Labor Code and the Applicable Wage
13 Orders amounted to a violation of California's UCL.

14 73. **Predominance of Common Questions:** Common questions of law and fact
15 predominate over questions that affect only individual Class Members. The common questions of law
16 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
17 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
18 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
19 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
20 meal periods, Defendants' failure to provide accurate itemized wage statements, Defendants' uniform
21 policies and practices which failed to provide complete and accurate sick pay, and others. As such, the
22 common questions predominate over individual questions concerning each individual class member's
23 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

24 74. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class Members
25 because Plaintiffs were employed by Defendants as non-exempt employees in California during the
26 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
27 Plaintiffs, like the other Class Members, were deprived of minimum, regular, and overtime wages
28 because of Defendants' unlawful timekeeping policies and practices, were deprived of rest periods and

1 premium wages in lieu thereof, were deprived of meal periods and premium wages in lieu thereof, were
2 subject to Defendants' uniform rest period policies and practices, were subject to Defendants' uniform
3 meal period policies and practices, were not provided accurate itemized wage statements, were not paid
4 all wages in full and on time, were not paid all sick pay wages as required by law, and were subject to
5 other similar policies and practices to which the Class Members were subject.

6 75. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
7 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs' attorneys
8 are ready, willing, and able to fully and adequately represent the Class Members and Plaintiffs.
9 Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal court
10 in the past and are committed to vigorously prosecuting this action on behalf of the Class Members.

11 76. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
12 important public interest in establishing minimum working conditions and standards in California.
13 These laws and labor standards protect the average working employee from exploitation by employers
14 who have the responsibility to follow the laws and who may seek to take advantage of superior
15 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
16 this action and the format of laws available to Plaintiffs and the Class Members make the class action
17 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
18 employee were required to file an individual lawsuit, Defendants would necessarily gain an
19 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
20 each individual plaintiff with their vastly superior financial and legal resources.

21 77. Moreover, requiring each Class Member to pursue an individual remedy would also
22 discourage the assertion of lawful claims by employees who would be disinclined to file an action
23 against their former or current employer for real and justifiable fear of retaliation and permanent
24 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
25 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
26 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
27 which would establish potentially incompatible standards of conduct for Defendants or legal
28 determinations with respect to individual Class Members which would, as a practical matter, be

dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests.

78. Further, the claims of the individual Class Members are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As such, the Class Members identified above are maintainable as a class under section 382 of the Code of Civil Procedure.

VI. EXHAUSTION OF REMEDIES

79. Plaintiffs have fully and completely exhausted administrative remedies under PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

80. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

VII. CAUSES OF ACTION

First Cause of Action

Failure to Pay All Minimum Wages

(Against All Defendants)

81. Plaintiffs reallege and incorporate by reference all previous paragraphs.

82. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest

1 accrued thereon.

2 83. Here, Defendants failed to fully conform their pay practices to the requirements of the
3 law during the relevant statutory periods. Plaintiffs and the other Class Members were not compensated
4 for all hours worked including, but not limited to, all hours they were subject to the control of
5 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage
6 Orders.

7 84. Labor Code section 1198 makes unlawful the employment of an employee under
8 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
10 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
11 in an amount equal to the wages due and interest thereon.

12 85. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
13 Plaintiffs and the other Class Members have sustained economic damages, including but not limited to
14 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
15 economic and statutory damages and penalties and other appropriate relief because of Defendants'
16 violations of the Labor Code and Applicable Wage Orders.

17 86. Defendants' practices and policies regarding illegal employee compensation are
18 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil
19 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
20 statutory penalties, attorneys' fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,
21 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

22 **Second Cause of Action**

23 *Failure to Pay All Overtime Wages*

24 *(Against All Defendants)*

25 87. Plaintiffs reallege and incorporate by reference all previous paragraphs.

26 88. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
27 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
28 worked and provide a private right of action for the failure to pay all overtime compensation for

1 overtime work performed. At all times relevant herein, Defendants were required to properly pay
2 Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code section
3 1194 and the Applicable Wage Orders. Defendants caused Plaintiffs and the other Class Members to
4 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
5 for such hours in accordance with California law. Likewise, Defendants caused Plaintiffs and the other
6 Class Members to work double-time hours but did not compensate them at twice their regular rate of
7 pay for such hours in accordance with California law.

8 89. Defendants failed to fully conform their pay practices to the requirements of California
9 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
10 policies and practices of failing to accurately record all the time that non-exempt employees were under
11 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
12 Plaintiffs and the other Class Members to recover in a civil action the unpaid amount of overtime
13 premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit
14 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of
15 Civil Procedure section 1021.5.

16 **Third Cause of Action**

17 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

18 *(Against All Defendants)*

19 90. Plaintiffs reallege and incorporate by reference all previous paragraphs.

20 91. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the
21 right of employees to be provided with a rest period of at least ten minutes for each four hour period
22 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11040, 11050.)

23 92. Due to Defendants' unlawful rest period policies and practices described in detail above,
24 Defendants did not authorize and permit Plaintiffs and the other Class Members to take all rest periods
25 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
26 additional hour of pay to Plaintiffs and the other Class Members at their respective regular rates of pay
27 for each violation, in accordance with California Labor Code section 226.7.
28

93. The foregoing violations create an entitlement to recovery by Plaintiffs and the other Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California Labor Code section 226.7.

Fourth Cause of Action

Failure to Provide Meal Periods and Pay Missed Meal Period Premiums

(Against All Defendants)

94. Plaintiffs reallege and incorporate by reference all previous paragraphs.

95. Plaintiffs are informed and believe and thereon allege, that Defendants failed in their affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs and the other Class Members, with all required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

96. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11040, 11050.)

Fifth Cause of Action

Failure to Maintain Accurate Employment Records

(Against All Defendants)

97. Plaintiffs reallege and incorporate by reference all previous paragraphs.

98. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall 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 wages paid to employees employed at the respective plants or establishments. These records must 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 two years.

99. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

100. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiffs and the other Class Members. Thus, Plaintiffs and the other Class Members have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

Sixth Cause of Action

Failure to Pay Wages Timely during Employment

(Against All Defendants)

101. Plaintiffs reallege and incorporate by reference all previous paragraphs.

102. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld.

103. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

104. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class Members, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiffs and the other

1 Class Members within seven days of the close of payroll, as required by law.

2 105. Defendants, as a matter of established company policy and procedure in the State of
3 California, falsely deny they owe Plaintiffs and the other Class Members these wages, with the intent
4 of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
5 and/or defraud Plaintiffs and the other Class Members.

6 106. Defendants' pattern, practice, and uniform administration of its corporate policy of
7 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs and
8 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
9 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
10 owed to them pursuant to Labor Code sections 210 and 218.5.

11 **Seventh Cause of Action**

12 *Failure to Pay All Wages Earned and Unpaid at Separation*

13 *(Against All Defendants)*

14 107. Plaintiffs reallege and incorporate by reference all previous paragraphs.

15 108. The actionable period for this cause of action is three years prior to the filing of this
16 complaint through the present, and ongoing until the violations are corrected or the class is certified.
17 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
18 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
19 202 of the California Labor Code require Defendants to pay all compensation due and owing to its
20 former employees (including the formerly-employed Class Members) during the actionable period for
21 this cause of action at or around the time that their employment is or was terminated, or ended.

22 109. Section 203 of the Labor Code provides that if an employer willfully fails to pay
23 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
24 employer is liable for penalties in the form of continued compensation up to thirty workdays.

25 110. Due to Defendants' faulty pay policies, those Class Members whose employment with
26 Defendants has concluded were not compensated for each and every hour worked at the appropriate
27 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
28 were certain at the time of termination within seventy-two hours of their resignation and have failed to

1 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

2 111. As a result, Defendants are liable to the formerly-employed Class Members for waiting
3 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
4 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
5 termination entitles an employee to recover waiting time penalties].)

6 **Eighth Cause of Action**

7 *Failure to Furnish Accurate Itemized Wage Statements*

8 *(Against All Defendants)*

9 112. Plaintiffs reallege and incorporate by reference all previous paragraphs.

10 113. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
11 time of each payment to furnish an itemized wage statement in writing showing:

- 12 (1) The gross wages earned;
- 13 (2) The total hours worked by the employee;
- 14 (3) The number of piece-rate units earned and any applicable piece rate if
15 the employee is paid on a piece rate basis;
- 16 (4) All deductions, provided that all deductions made on written orders of
17 the employee may be aggregated and shown as one item;
- 18 (5) The net wages earned;
- 19 (6) The inclusive dates of the period for which the employee is paid;
- 20 (7) The name of the employee and only the last four digits of his or her social
21 security number or an employee identification number other than a social
22 security number;
- 23 (8) The name and address of the legal entity that is the employer; and
- 24 (9) All applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the
26 employee.

27 114. As set forth above, Defendants issued and continues to issue wage statements to its non-
28 exempt employees including Plaintiffs and the other Class Members that are inadequate under Labor

1 Code section 226, subdivision (a). By failing to pay Plaintiffs and the other Class Members properly
2 as described above, Defendants failed to include required information on their wage statements,
3 including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code
4 section 226, subdivision (a).

5 115. Defendants also failed to include the accrued sick hours on the wage statements
6 provided to Plaintiffs and the other Class Members as required by Labor Code section 246, subdivision
7 (i).

8 116. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
9 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

10 117. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs
11 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiffs and the
12 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
13 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
14 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
15 reasonable attorneys' fees.

16 **Ninth Cause of Action**

17 *Failure to Pay Sick Leave*

18 *(Against All Defendants)*

19 118. Plaintiffs reallege and incorporate by reference all previous paragraphs.

20 119. Labor Code section 246 provides that an employee who works for the same employer
21 for 30 or more days within a year from the commencement of employment is entitled to paid sick days.
22 (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour
23 per every 30 hours worked. (Lab. Code, § 246, subd. (b).)

24 120. The employer must calculate paid sick leave by using one of two calculations: **(1)** "Paid
25 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
26 for the workweek in which the employee uses paid sick time, whether or not the employee actually
27 works overtime in that workweek," or **(2)** "Paid sick time for nonexempt employees shall be calculated
28 by dividing the employee's total wages, not including overtime premium pay, by the employee's total

1 hours worked in the full pay periods of the prior 90 days of employment.” (Lab. Code, § 246, subds.
2 (l)(1), (2).)

3 121. Here, Defendants employed Plaintiffs and the other Class Members for 30 or more days
4 within a year from the commencement of employment. Defendants nevertheless failed to fully pay
5 Plaintiffs and the other Class Members for all sick pay that was lawfully earned and accrued. This
6 resulted in Plaintiffs and the other Class Members being underpaid for their lawfully-accrued sick
7 leave, and resulted in derivative violations including, among others, of Labor Code section 201, 202,
8 and 203, because Defendants did not pay, or timely pay, Plaintiffs and the other Class Members all
9 owing and unpaid wages for work performed by them during their employment and at the end of their
10 employment.

11 122. As a consequence for violating Labor Code section 246, Plaintiffs and the other Class
12 Members are have sustained damages in an amount to be established at trial, are entitled to attorneys’
13 fees and costs of suit, and Defendants are subject to all applicable penalties.

14 **Tenth Cause of Action**

15 *Violations of California’s Unfair Competition Law*

16 *(Against All Defendants)*

17 123. Plaintiffs reallege and incorporate by reference all previous paragraphs.

18 124. Defendants have engaged and continue to engage in unfair and/or unlawful business
19 practices in California in violation of California Business and Professions Code section 17200 through
20 17210, by committing the unlawful acts described above. Defendants’ utilization of these unfair and
21 unlawful business practices deprived and continue to deprive Plaintiffs and the other Class Members
22 of compensation to which they are legally entitled. These practices constitute unfair and unlawful
23 competition and provide an unfair advantage over Defendants’ competitors who have been and/or are
24 currently employing workers and attempting to do so in honest compliance with applicable wage and
25 hour laws.

26 125. Because Plaintiffs are a victim of Defendants’ unfair and unlawful conduct alleged
27 herein, Plaintiffs for themselves and on behalf of the Class Members, seek full restitution of monies,
28 as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted

1 by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

2 126. The acts complained of herein occurred within the four years prior to the initiation of
3 this action and are continuing into the present and ongoing.

4 127. Plaintiffs were compelled to retain the services of counsel to file this Court action to
5 protect their interests and those of the Class Members, to obtain restitution and injunctive relief on
6 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the
7 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which
8 Plaintiffs are entitled to recover under Code of Civil Procedure section 1021.5.

9 **Eleventh Cause of Action**

10 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*
11 *202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194,*
12 *1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and Other Provisions of the Labor Code*
13 *(Against All Defendants)*

14 128. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 129. Based on the above allegations incorporated by reference, Defendants violated Labor
16 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194,
17 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and the Applicable Wage
18 Order (Cal. Code of Regs., tit. 8, §§ 11040, 11050), and others that may be applicable.

19 130. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
20 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
21 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
22 1199, and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, §§
23 11040, 11050), and others that may be applicable.

24 131. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
25 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
26 of trial subject to the following formula:

27 A. \$100 for the initial violation per employee per pay period; and

28 B. \$200 for each subsequent violation per employee per pay period.

1 132. These penalties must be allocated seventy-five percent to the Labor and Workforce
2 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
3 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
4 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
5 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
6 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
7 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
8 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
9 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
10 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
11 different Labor Code violations.”], internal quotation marks omitted).

12 133. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
13 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
14 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
15 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
16 780, 788.)

17 134. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
18 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
19 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
20 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
21 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
22 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
23 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
24 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
25 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
26 subdivision (e).

27 135. Labor Code section 210 provides that “in addition to, an entirely independent and apart
28 from, any other penalty provided in this article, every person who fails to pay the wages of each

1 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
4 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
5 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
6 penalties under Labor Code section 210 through PAGA.

7 136. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
8 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
9 intentionally committed for each underpaid employee for each pay period for which the employee is
10 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
11 offense for each underpaid employee for each pay period for which the employee is underpaid
12 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
13 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
14 to Labor Code section 1197.1.

15 137. Plaintiff was compelled to retain the services of counsel to file this action to protect his
16 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
17 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
18 to recover under Labor Code section 2699, subdivision (g)(1).

19 **VIII. DEMAND FOR JURY TRIAL**

20 138. Plaintiffs hereby demand trial by jury of Plaintiffs’ and the Class Members’ claims
21 against Defendants.

22 **IX. PRAYER FOR RELIEF**

23 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought
24 against Defendants, as follows:

- 25 1. For an order certifying the proposed class;
- 26 2. For an order appointing Plaintiff as representative of the class;
- 27 3. For an order appointing Plaintiff’s counsel as counsel for the class;
- 28

- 1 **4.** For the failure to pay all minimum wages, compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
3 1197, and others as may be applicable;
- 4 **5.** For the failure to pay all overtime wages, compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
6 1198, and others as may be applicable;
- 7 **6.** For the failure to provide rest periods and pay missed rest period premiums,
8 compensatory, consequential, general, and special damages according to proof pursuant
9 to Labor Code section 226.7;
- 10 **7.** For the failure to provide meal periods and pay missed meal period premiums,
11 compensatory, consequential, general, and special damages according to proof pursuant
12 to Labor Code sections 226.7 and 512;
- 13 **8.** For the failure to maintain accurate employment records, penalties pursuant to Labor
14 Code sections 226.3, 1174.5, and others that may be applicable;
- 15 **9.** For the failure to pay wages timely during employment, the unpaid balance of the
16 compensation owed to Plaintiff and the other Class Members and any applicable
17 penalties owed to them pursuant to Labor Code section 210;
- 18 **10.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time
19 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who
20 quit or were fired in an amount equal to their daily wage multiplied by thirty days, as
21 may be proven;
- 22 **11.** For the violations of California's Unfair Competition Law, restitution to Plaintiff and
23 the other Class Members of all money and/or property unlawfully acquired by
24 Defendants by means of any acts or practices declared by this Court to be in violation
25 of Business and Professions Code sections 17200 through 17210;
- 26 **12.** For the claim of penalties pursuant to PAGA and other provisions of the California
27 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
28 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),

1 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
2 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
3 available under Labor Code section 210;

4 **13.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
5 and Civil Code sections 3287 and 3289;

6 **14.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
7 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
8 section 1021.5, and others as may be applicable;

9 **15.** For an order enjoining Defendants, and each of them, and their agents, servants, and
10 employees, and all persons acting under, in concert with, or for them, from acting in
11 derogation of any rights or duties adumbrated in this complaint; and

12 **16.** For such other and further relief, this Court may deem just and proper.
13

14 Dated: July 8, 2024

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiffs, the Putative Class, and the
Aggrieved Employees

PROOF OF SERVICE

STATE OF CALIFORNIA, LOS ANGELES COUNTY

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

I declare that on the date hereof, July 8, 2024, I served the foregoing document(s) described as:

First Amended Class and PAGA Representative Action Complaint For:

By causing a true copy thereof to be sent to the following individuals and/or parties:

Janet Ly

jly@ghslaw.com

Alex C. Sears

jsu@ghslaw.com

GARCIA HERNÁNDEZ SAWHNEY, LLP

Attorneys for Defendant

330 N. Brand Blvd., Suite 680

Glendale, California 91203

Tel: (213) 347-0210

Fax: (213) 347-0216

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 8, 2024, in Los Angeles, California.



Sandra Garcia