

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO	Court Use Only
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 9th Street, Sacramento, CA 95814	
PLAINTIFF/PETITIONER: Socorro Findora et al	
DEFENDANT/RESPONDENT: Eskaton Properties Incorporated et al	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (UNLIMITED CIVIL CASE)	CASE NUMBER: 24CV015917

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE OF CASE ASSIGNMENT

Pursuant to rule 3.734 of the California Rules of Court, this action is hereby assigned for limited purposes to the judicial officers indicated below:

PURPOSE	ASSIGNED JUDGE	COURT LOCATION	DEPARTMENT
LAW & MOTION	Richard K. Sueyoshi	Hall of Justice	53
CASE MANAGEMENT PROGRAM	Thadd A. Blizzard	Gordon D. Schaber Superior Court	43

Please refer to Chapter Two – Parts 3 and 4 of the Sacramento Superior Court Local Rules and the Court's website for additional filing instructions and hearing reservation information.

NOTICE OF CASE MANAGEMENT CONFERENCE

Hearing Date

The above entitled action has been set for a case management conference at **8:30 AM** on **June 27, 2025** in **Department 43** in accordance with California Rules of Court 3.722. You must be familiar with the case and fully prepared to participate effectively in the case management conference.

Case Management Statement

All parties must file and serve a case management statement at least 15 calendar days before the case management conference. Parties are encouraged to file a single joint case management statement.

Minimum Requirements

Prior to the filing of the case management statement, the parties should have done the following:

- Served all parties named in the complaint within 60 days after the summons has been issued
- Ensured that all defendants and cross-defendants have answered, been dismissed, or had their defaults entered
- Met and conferred with all parties as required by CRC 3.724 to discuss and resolve issues set forth therein.

**NOTICE OF CASE ASSIGNMENT
AND CASE MANAGEMENT CONFERENCE
(UNLIMITED CIVIL CASE)**

Tentative Ruling

Following its review of the case management statement(s), the court may determine that a case management conference is not necessary. To determine whether an appearance is required, the parties must check the court's tentative rulings after 2:00 p.m. on the Court day before the Friday calendar by accessing the court's internet website at www.saccourt.ca.gov

Remote Appearances

Unless ordered to appear in person by the court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the court and all other parties in accordance with Code of Civil Procedure 367.75. If appearing remotely, parties are required to participate in their hearing using a device that has video and/or audio capability (i.e. computer, smartphone, or tablet). Although remote participation is not required, the court will presume all parties are appearing remotely for non-evidentiary civil hearings.

Certification Filed in Lieu of Case Management Statement

If parties in the action file a certification on a form provided by the court at least 15 calendar days prior to the date of the case management conference that the case is short cause (five hours or less of trial time), that the pleading stage is complete and that the case will be ready for trial within 60 days, the case will be exempted from any further case management requirements and will be set for trial within 60-120 days. The certification shall be filed in lieu of a case management statement.

Case Management Orders

At the case management conference, the court will consider whether the case should be ordered to judicial arbitration or referred to other forms of Alternative Dispute Resolution. Whether or not a case management conference is held, the court will issue a case management order shortly after the scheduled conference date.

Service of Notice of Case Assignment and Case Management Conference

Unless otherwise ordered by the court, plaintiff shall serve a copy of this notice on any party to the complaint appearing after the court issued this notice. The cross-complainant shall have the same obligation with respect to the cross-complaint.

Compliance

Failure to comply with this notice or to appear at the case management conference may result in the imposition of sanctions (including dismissal of the case, striking of the answer, or payment of money).

Continuances

Case management conference(s) will not be continued except on a showing of good cause. If your case management conference is continued on motion or by the court on its own motion all parties shall file and serve a new case management statement at least 15 calendar days before the continued case management conference.

Dated: 08/12/2024

By:

/s/ A. Mocanu
A. Mocanu, Deputy Clerk

SUMMONS
(CITACION JUDICIAL)

Issued and Filed
Superior Court of California
Sacramento SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
08/12/2024
mocanu
By _____, Deputy
24CV015917

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

ESKATON PROPERTIES, INCORPORATED, a California non-profit corporation, and DOES 1-50 inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SOCORRO FINDORA, an individual, on behalf of herself, all aggrieved employees, and the State of California as a Private Attorneys General,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Gordon D. Schaber Courthouse
720 9th Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Koul Law Firm, APC, 3435 Wilshire Blvd., Suite 1710, Los Angeles, CA 90010, (213) 761-5484

DATE: JUL 12 2024 Clerk, by A. MOCANU, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Nazo Koulloukian, SBN 263809
KOUL LAW FIRM, APC, 3435 Wilshire Blvd., Suite 1710, Los Angeles, CA 90010

TELEPHONE NO.: (213) 761-5484 FAX NO.: (818) 561-3938
EMAIL ADDRESS: nazo@koullaw.com
ATTORNEY FOR (Name): Plaintiff and all Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

STREET ADDRESS: 720 9th Street
MAILING ADDRESS:
CITY AND ZIP CODE: Sacramento, CA 95814
BRANCH NAME: Gordon D. Schaber Courthouse

CASE NAME:
FINDORA v. ESKATON PROPERTIES, INCORPORATED

FOR COURT USE ONLY

08/09/2024

mocanua

By _____, Deputy

24CV015917

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$35,000)
☐ **Limited** (Amount demanded is \$35,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

BY FAX

JUDGE:

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☐ Substantial amount of documentary evidence
d. ☐ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): One (1)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 8, 2024

Nazo Koulloukian, Esq.

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner
Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Filed
Superior Court of California,
Sacramento
08/09/2024
mocanua
By _____, Deputy
24CV015917

1 Nazo Koulloukian, SBN 263809
nazo@koullaw.com
2 Hilary Silvia, Of-Counsel, SBN 237993
hilary@koullaw.com
3 **KOUL LAW FIRM, APC**
3435 Wilshire Blvd., Suite 1710
4 Los Angeles, CA 90010
Telephone: (213) 761-5484
5 Facsimile: (818) 561-3938

6 Attorneys for Plaintiff,
SOCORRO FINDORA on behalf of
7 herself, all aggrieved employees, and the State
of California as a Private Attorneys General
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11
12 SOCORRO FINDORA, an individual, on
behalf of herself, all aggrieved employees, and
13 the State of California as a Private Attorneys
General,

14 Plaintiff,

15
16 vs.

17 ESKATON PROPERTIES,
18 INCORPORATED, a California non-profit
19 corporation, and DOES 1-50, inclusive,

20 Defendant.
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) Case No.:

) **REPRESENTATIVE ACTION**

) **Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

BY FAX

1 Plaintiff SOCORRO FINDORA brings this PAGA representative action complaint on
2 behalf of herself, all aggrieved employees, and the State of California as a Private Attorneys
3 General, and alleges as follows:

4
5 **NATURE OF THE ACTION**

6 1. Plaintiff SOCORRO FINDORA worked as an employee for Defendant ESKATON
7 PROPERTIES, INCORPORATED and Does 1-50 (collectively "Defendant").

8 2. Plaintiff worked for Defendant at its healthcare facility in Carmichael, CA, as a Certified
9 Nursing Assistant from November 2022 until the present. Plaintiff brings this action pursuant to
10 the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a
11 representative basis. All current and former hourly, nonexempt employees of Defendant within
12 one year of serving notice on the LWDA to the present are aggrieved employees.

13 3. Defendant failed to comply with California Labor Code requirements due to erroneous,
14 willful and intentional employment practices and policies. Plaintiff brings this representative
15 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
16 California, based upon the claims articulated below. Plaintiff provided notice of her claims
17 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA") as
18 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
19 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
20 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
21 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.*

22 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to properly calculate and pay reporting time
24 wages; (3) failing to properly calculate and pay vacation wages; (4) failing to properly calculate
25 and pay sick leave wages; (5) failing to properly calculate and pay overtime wages; (6) failing to
26 pay all wages twice per month; (7) failing to pay minimum wage; (8) failing to provide rest breaks;
27 (9) failing to provide uninterrupted meal breaks; (10) failing to reimburse for required business
28 expenses; (11) failing to pay wages due upon termination; (12) failing to provide accurate itemized

1 wage statements and; (13) issuing unlawful employment documents. Defendant is therefore liable
2 for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
3 (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

4 THE PARTIES

5 5. Plaintiff SOCORRO FINDORA is a resident of the State of California and works as an
6 employee for Defendant at its healthcare facility in Carmichael, CA, as a Certified Nursing
7 Assistant from November 2022 until the present.

8 6. Defendant ESKATON PROPERTIES, INCORPORATED is a California non profit
9 corporation authorized to do business and doing business in California with the capacity to sue and
10 to be sued, and doing business, in the county of Sacramento, State of California.

11 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
12 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
13 informed and believes and thereon alleges that said Defendant is legally responsible for the
14 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
15 will amend this complaint when their true names and capabilities are ascertained.

16 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
17 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
18 of the representative class, and exercised control over their wages, hours, and working conditions.
19 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
20 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
21 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
22 to the other Defendants.

23 JURISDICTION AND VENUE

24 9. Venue is proper in this judicial district because Defendant conducts business in this
25 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
26 in this case that arose in this county.

27 10. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
28 the Superior Court and will be established according to proof at trial. Based on information,

1 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
2 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
3 (\$25,000).

4 11. The California Superior Court has jurisdiction in this matter because Plaintiff is a
5 resident of California and Defendant is qualified to do business in California and regularly conduct
6 business in California. Further, there is no federal question at issue as the claims herein are based
7 solely on California law.

8 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

9 12. During the relevant time-period, Defendant committed various violations of the
10 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
11 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

12 13. This representative action represents over one hundred current and former aggrieved
13 employees.

14 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
15 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
16 numerous Labor Code sections, as set forth more fully below.

17 15. Plaintiff and all current and former hourly, nonexempt employees within one year of
18 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
19 *et seq.* (See Labor code §2699(c).)

20 16. Defendant, and each of them, have committed the following violations of the California
21 Labor Code:

22 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

23 (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
24 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

25 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 18. The Wage Orders define "hours worked" as "the time during which an employee is
28 subject to the control of an including all the time the employee is suffered or permitted to work,

1 whether or not required to do so.” Defendant has been engaged in many unlawful employment
2 practices which resulted in underpayment for hours worked each pay period.

3 19. Off the Clock Work. Plaintiff and other aggrieved employees were required to check
4 in and go through a security screening before they entered the parking lot at employer’s facility at
5 the start of their shift and/or upon returning from unpaid meal periods. After proceeding through
6 the security screening, employees then walk at least 5 minutes to the inconveniently located time
7 clocks. This results in off the clock time under Defendant’s control and by Defendant’s design
8 each time employees enter the facility.

9 20. Work Performed During Unpaid Meal Periods. Plaintiff and other aggrieved employees
10 were sometimes required to clock out for lunch but to continue working. Defendant short-staffed
11 its facilities so that employees were unable to take complaint meal periods due to the press or work.
12 Defendant pressured employees to clock out for lunch and to continue working so that their
13 timecards would not reveal a meal period violation and employees were unpaid for time spent
14 working while clocked out.

15 21. Defendant’s conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197
16 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
17 226, 558, 1194 and 1194.2, Plaintiff and other Aggrieved Employees are entitled to recover
18 damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys’
19 fees, expenses, and costs of suit. As a result of these ongoing violations, Defendant is liable for,
20 among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

21 **Improper Calculation of Regular Rate of Pay – Failure to Pay Reporting Time Wages**

22 (Cal. Code Regs. tit. 8, § 11050 (5)/Wage Order 5, Labor Code §§1198, 2698 *et seq*)

23 22. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 23. Defendant pays shift differentials and other forms of nondiscretionary pay to its hourly,
26 non-exempt employees. It is well established that shift differential payments and other forms of
27 compensation increase the employee’s “regular rate” of pay for purposes of calculating overtime,
28 reporting time, sick pay, and vacation time. The “regular rate” is calculated by dividing the hours

1 worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.*
2 (2008) 169 CA4th 804, 807.)

3 24. The IWC Wage Order requires employers to pay half of the employee's "usual or
4 scheduled day's work," and in no event less than two (2) hours pay on each instance the employer
5 requires an employee to report to work, as set forth fully below:

6 25. 5. Reporting Time Pay

7 A. Each workday an employee is required to report for work and does
8 report, but is not put to work or is furnished less than half said employee's usual
9 or scheduled day's work, the employee shall be paid for half the usual or
10 scheduled day's work, but in no event for less than two (2) hours nor more than
11 four (4) hours, at the employee's regular rate of pay, which shall not be less than
the minimum wage.

12 26. Aggrieved employees were not paid reporting time wages in accordance with
13 California law, including but not limited to the applicable IWC Wage Order. For example, when
14 employees reported to work for a scheduled shift but were sent home and/or were not put to work,
15 they were either not paid reporting time pay at all, or they were paid at their base rate of pay and
16 not their regular rate of pay in accordance with California law.

17 **Improper Calculation of Regular Rate of Pay – Failure to Pay Vacation Wages**

18 (Cal. Lab. Code §227.3, 2698 *et seq.*, Wage Order 5)

19 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 28. Defendant pays shift differentials and other forms of nondiscretionary pay to its hourly,
22 non-exempt employees. It is well established that shift differential payments and other forms of
23 compensation increase the employee's "regular rate" of pay for purposes of calculating overtime,
24 reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours
25 worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.*
26 (2008) 169 CA4th 804, 807.)
27
28

1 29. Defendant pays vacation wages/PTO at the base rate of pay instead of at the employee's
2 regular rate of pay, both during employment and when employment terminates.

3 30. California Labor Code section 227.3 provides that when an employer policy provides
4 for paid vacations and/or paid time off, and an employee is terminated without having taken off
5 his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages
6 at the employee's final rate in accordance with such contract of employment or employer policy
7 respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or
8 paid time off upon termination. Defendant underpaid vacation wages by paying them at the base
9 rate and not the often higher regular rate.

10 **Failure to Properly Calculate and Pay Sick Leave Wages**

11 (Cal. Labor Code §§246, 2698 *et seq.*)

12 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 32. Defendant pays shift differentials and other forms of nondiscretionary pay to its hourly,
15 non-exempt employees. It is well established that shift differential payments and other forms of
16 compensation increase the employee's "regular rate" of pay for purposes of calculating overtime,
17 reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours
18 worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.*
19 (2008) 169 CA4th 804, 807.)

20 33. Employers must calculate paid sick leave for non-exempt employees in one of two
21 ways:

22 A. Paid sick time for nonexempt employees shall be
23 calculated in the same manner as the regular rate of pay for the
24 workweek in which the employee uses paid sick time, whether
25 or not the employee actually works overtime in that workweek;
26 [or]

27 B. Paid sick time for nonexempt employees shall be
28 calculated by dividing the employee's total wages, not including
overtime premium pay, by the employee's total hours worked in
the full pay periods of the prior 90 days of employment.
Labor Code § 246 (l)

1 34. Plaintiff and aggrieved employees were paid sick leave wages at their base hourly rates
2 of pay, which is less than required under either of the two alternative methods of calculation
3 provided by Labor Code section 246(l).

4 **Improper Calculation of Regular Rate of Pay – Failure to Pay Overtime Wages**

5 (Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq.*)

6 35. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 36. Defendant pays shift differentials and other forms of nondiscretionary pay to its hourly,
9 non-exempt employees. It is well established that shift differential payments and other forms of
10 compensation increase the employee's "regular rate" of pay for purposes of calculating overtime,
11 reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours
12 worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.*
13 (2008) 169 CA4th 804, 807.)

14 37. Defendant has failed to properly calculate and pay overtime compensation. Plaintiff
15 and other employees have been denied "the unpaid balance of the full amount of this... overtime
16 compensation" as required by Cal. Labor Code. §1194, and Defendant is liable for civil penalties
17 pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Defendant has violated Cal. Labor Code
18 §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1)
19 for failure to pay overtime. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558
20 and 2698 *et seq.*

21 **Failure to Pay All Wages Owed Twice Per Month**

22 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

23 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 39. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
26 twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay all
27 wages earned to employees as a result of the unlawful employment policies and practices discussed
28 herein. As a result of these practices, aggrieved employees were underpaid for hours worked,

1 including overtime, PTO, vacation, sick pay, and meal and rest premium wages, and this
2 underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure,
3 Defendant is liable under Labor Code §210 for failure to pay wages as required by law.

4 **Failure to Pay Minimum Wage**

5 (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

6 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 41. Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to
9 suffer or permit a California employee to work without paying wages at the proper minimum wage
10 for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage
11 Orders “hours worked” include “the time during which an employee is subject to the control of an
12 employer, and includes all the time the employee is suffered or permitted to work, whether or not
13 required to do so.”

14 42. During the applicable recovery period, Plaintiff and aggrieved employees were
15 suffered, permitted, and required to perform work by Defendant for which they received no pay.
16 The aforementioned acts by Defendant were undertaken with the intention of depriving aggrieved
17 employees of their earned wages. As a result of these ongoing violations, Defendant is liable for,
18 among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

19 **Failure to Provide Rest Breaks**

20 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

21 43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 44. Defendant has failed to maintain a compliant rest period policy and practice that
24 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
25 rarely receiving rest breaks due to the press of work

26 45. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
27 duty”, or not scheduled before and after a meal period for shifts greater than six hours, as
28

1 prescribed by California law because Defendant: (1) did not account for all hours worked that were
2 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
3 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
4 inform and train employees about when, where and how to take timely and uninterrupted ten-
5 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
6 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
7 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
8 break policy.

9 46. Defendant did not authorize or permit all of its hourly employees to take at least a ten
10 minute timely rest period in which they were relieved of all duties, for every 4 hours of work, or
11 major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When
12 breaks were missed Defendant failed to pay the 1-hour premium pay at the employee's *regular*
13 *rate of pay*, as required. Because Defendant violated the Wage Order, Defendant is liable to
14 Plaintiff and aggrieved employees under Labor Code §1198. As a result of these violations,
15 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. Seq.*

16 **Failure to Provide Uninterrupted Meal Breaks**

17 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

18 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 48. During Plaintiff's employment, Defendant failed to maintain a compliant meal period
21 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
22 a timely off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may
23 not employ an employee for a work period of more than five hours per day without providing the
24 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
25 employer shall require an employee to work during any meal... period mandated by an applicable
26 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
27 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
28

1 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
2 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

3 49. Plaintiff and aggrieved employees often experienced late, short, and/or interrupted
4 meal periods, or their meal periods were missed altogether. Plaintiff and aggrieved employees
5 were also sometimes instructed and required to clock out for lunch but to keep working. Plaintiff
6 and aggrieved employees were also required to indicate on the time clock system that they
7 voluntarily waived a timely meal period on certain occasions when they were not permitted to take
8 a timely, compliant meal period.

9 50. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
10 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
11 (2) did not adequately inform and train employees about their rights to meal periods and premium
12 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
13 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
14 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
15 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
16 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
17 and aggrieved employees were not paid a premium payment, paid at their regular rate of pay when
18 meal periods were not given to them in compliance with California law. Accordingly, Defendant
19 is liable to Plaintiff and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698
20 *et. seq.*

21 **Failure to Reimburse For Required Business Expenses**

22 (Cal. Lab. Code §§1198, 2802 and 2699 *et seq.*)

23 51. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 52. Labor Code §2802 requires employers to indemnify employees for necessary
26 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
27 Plaintiff and aggrieved employees were required to use their personal phones for work purposes.
28 Defendant paid employees \$0.50 on their wage statements for use of their mobile phones but this

1 amount is clearly insufficient to reimburse employees for this use. Defendant failed to sufficiently
2 reimburse employees for these necessary business expenses and is therefore liable to Plaintiff and
3 aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

4 **Failure to Pay Wages Due Upon Termination**

5 (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*)

6 53. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 54. An employee who is discharged must be paid all of his or her wages, including accrued
9 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
10 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
11 Plaintiff at the time employment terminated.

12 55. Defendant willfully failed to pay employees who are no longer employed by it all
13 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
14 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
15 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
16 Cal. Lab. Code § 2698 *et. seq.*

17 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
18 **Requirements**

19 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

20 56. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
21 incorporate said paragraphs herein by reference.

22 57. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
23 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
24 and keep accurate records as required by §1174(d).

25 58. The statements provided to Plaintiff and aggrieved employees, and the records
26 maintained by Defendant, have not accurately reflected actual gross wages earned, including pay
27 for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay,
28 vacation wages, and pay for meal and rest period premium wages.

1 59. §226 (a) requires:

2 A. An employer, semimonthly or at the time of each
3 payment of wages, shall furnish to his or her employee, either as
4 a detachable part of the check, draft, or voucher paying the
5 employee's wages, or separately if wages are paid by personal
6 check or cash, an accurate itemized statement in writing showing
7 (1) gross wages earned, (2) total hours worked by the employee,
8 except as provided in subdivision (j), (3) the number of piece-
9 rate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis, (4) all deductions, provided that all
11 deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7)
14 the name of the employee and only the last four digits of his or
her social security number or an employee identification number
other than a social security number, (8) the name and address of
the legal entity that is the employer and, if the employer is a farm
labor contractor, as defined in subdivision (b) of Section 1682,
the name and address of the legal entity that secured the services
of 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...

15 60. Such failures called injury to Plaintiff and others, by, among other things, impeding
16 them from knowing the amount of wages to which they are and were entitled. Defendant
17 knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned,
18 and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et*
19 *seq.*

20 **Unlawful Employment Documents**

21 (Cal. Labor Code §§432.5, 2699 *et seq*)

22 61. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 62. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
25 employees to sign employment-related contracts and documents that contained unlawful terms of
26 employment, including invalid meal period waivers and documents resulting from a noncompliant
27 meal period policy and/or practice.
28

1 **FIRST CAUSE OF ACTION**

2 **Against Defendant for Violation of the Private Attorneys General Act ("PAGA")**

3 **(California Labor Code §2698 *et seq.*)**

4 63. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 64. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by Defendant
7 during the applicable statutory period and suffered one or more of the Labor Code violations set
8 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
9 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
10 attorneys' fees and costs.

11 65. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 66. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558,
18 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5);
- 19 b. Improper Calculation of Regular Rate of Pay – Failure to Pay Reporting Time
20 Wages (Cal. Code Regs. tit. 8, § 11050 (5)/Wage Order 5, Labor Code §§1198,
21 2698 *et seq.*);
- 22 c. Improper Calculation of Regular Rate of Pay – Failure to Pay Vacation Wages (Cal.
23 Lab. Code §227.3, 2698 *et seq.*, Wage Order 5);
- 24 d. Failure to Properly Calculate and Pay Sick Leave Wages (Cal. Labor Code §§246,
25 2698 *et seq.*);
- 26 e. Improper Calculation of Regular Rate of Pay – Failure to Pay Overtime Wages
27 (Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq.*);
- 28

- f. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and 2698 *et seq.*);
- g. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- h. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- i. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*);
- j. Failure to Reimburse For Required Business Expenses (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*);
- k. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*);
- l. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*);
- m. Unlawful Employment Documents (Cal. Labor Code §§432.5, 2699 *et seq.*);

67. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

68. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

69. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

70. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

71. At the time of each violation, Defendant employed one or more employees.

72. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

73. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgment and post-judgment interest as provided by law; and

1 5. Such other and further relief that the Court may deem just and proper.

2
3 DATED: August 8, 2024

4
5 **KOUL LAW FIRM, APC**

6 

7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff SOCORRO FINDORA, and
9 all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

May 30, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Eskaton Properties, Incorporated
5105 Manzanita Avenue
Carmichael, CA 95608

Re: PAGA Notice Pursuant to California Labor Code §2699
 Claimant: Socorro Findora
 Employer: Eskaton Properties, Incorporated

Dear Sir or Madam:

Claimant and aggrieved employee Socorro Findora has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent her, and all other aggrieved employees in California, for wage and hour claims against her employer, Eskaton Properties, Incorporated, (hereafter referred to as “Employer”). Employer hired, assigned, and paid Claimant to work at its healthcar/retirement home facility in Carmichael, CA, as a Certified Nursing Assistant from November 2022 until the present.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by Claimant, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Claimants need not have actually suffered all of the Labor Code violations that they alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those Claimant may not have personally suffered.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5

The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Off the Clock Work

Claimant and other aggrieved employees were required to check in and go through a security screening before they entered the parking lot at employer's facility at the start of their shift and/or upon returning from unpaid meal periods. After proceeding through the security screening, employees then walk at least 5 minutes to the inconveniently located time clocks. This results in off the clock time under Employer's control and by Employer's design each time employees enter the facility.

Work Performed During Unpaid Meal Periods

Claimant and other aggrieved employees were sometimes required to clock out for lunch but to continue working. Employer short-staffed its facilities so that employees were unable to take complaint meal periods due to the press or work. Employer pressured employees to clock out for lunch and to continue working so that their timecards would not reveal a meal period violation and employees were unpaid for time spent working while clocked out.

Employer's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees,

expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq.

Improper Calculation of Regular Rate of Pay – Failure to Pay Reporting Time Wages

Cal. Code Regs. tit. 8, § 11050 (5)/Wage Order 5, Labor Code §§1198, 2698 *et seq.*

Employer pays shift differentials and other forms of nondiscretionary pay to its hourly, non-exempt employees. It is well established that shift differential payments and other forms of compensation increase the employee's "regular rate" of pay for purposes of calculating overtime, reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

The IWC Wage Order requires employers to pay half of the employee's "usual or scheduled day's work," and in no event less than two (2) hours pay on each instance the employer requires an employee to report to work, as set forth fully below:

5. Reporting Time Pay

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

Aggrieved employees were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, when employees reported to work for a scheduled shift but were sent home and/or were not put to work, they were either not paid reporting time pay at all, or they were paid at their base rate of pay and not their regular rate of pay in accordance with California law.

Improper Calculation of Regular Rate of Pay – Failure to Pay Vacation Wages

Cal. Lab. Code §227.3, 2698 *et seq.*, Wage Order 5

Employer pays shift differentials and other forms of nondiscretionary pay to its hourly, non-exempt employees. It is well established that shift differential payments and other forms of compensation increase the employee's "regular rate" of pay for purposes of calculating overtime, reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer pays vacation wages/PTO at the base rate of pay instead of at the employee's regular rate of pay, both during employment and when employment terminates.

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Employer underpaid vacation wages by paying them at the base rate and not the often higher regular rate.

Failure to Properly Calculate and Pay Sick Leave Wages

Cal. Labor Code §§246, 2698 *et seq*

Employer pays shift differentials and other forms of nondiscretionary pay to its hourly, non-exempt employees. It is well established that shift differential payments and other forms of compensation increase the employee's "regular rate" of pay for purposes of calculating overtime, reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Improper Calculation of Regular Rate of Pay – Failure to Pay Overtime Wages

Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq*

Employer pays shift differentials and other forms of nondiscretionary pay to its hourly, non-exempt employees. It is well established that shift differential payments and other forms of compensation increase the employee's "regular rate" of pay for purposes of calculating overtime, reporting time, sick pay, and vacation time. The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer has failed to properly calculate and pay overtime compensation. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194, and Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Cal. Lab. Code §§204, 210, and 2698 *et seq.*

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime, PTO, vacation, sick pay, and meal and rest premium wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage Orders “hours worked” include “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.”

During the applicable recovery period, Claimant and aggrieved employees were suffered, permitted, and required to perform work by Employer for which they received no pay. The aforementioned acts by Employer were undertaken with the intention of depriving aggrieved employees of their earned wages. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports rarely receiving rest breaks due to the press of work

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute timely rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour premium pay at the employee’s *regular rate of pay*, as required. Because Employer violated the Wage Order, Employer is liable to Claimant and aggrieved employees under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take a timely off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n 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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an 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.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees often experienced late, short, and/or interrupted meal periods, or their meal periods were missed altogether. Claimant and aggrieved employees were also sometimes instructed and required to clock out for lunch but to keep working. Employees were also required to indicate on the time clock system that they voluntarily waived a timely meal period on certain occasions when they were not permitted to take a timely, compliant meal period.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium

payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid at their regular rate of pay when meal periods were not given to them in compliance with California law. Accordingly, Employer is liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

Cal. Labor Code §§1198, 2802, 2699 *et seq.*

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to use their personal phones for work purposes. Employer paid employees \$0.50 on their wage statements for use of their mobile phones but this amount is clearly insufficient to reimburse employees for this use. Employer failed to sufficiently reimburse employees for these necessary business expenses and is therefore liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimants and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record-Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimants and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay, vacation wages, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Unlawful Employment Documents

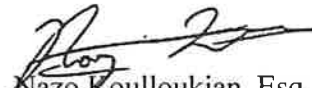
(Cal. Labor Code §§432.5, 2699 *et seq*)

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers and documents resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue the claims as a representative action in civil court.

Respectfully submitted,


Nazo Koulloukian, Esq.
Attorney for Claimant