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17 Attorneys for Plaintiff,
18 ELIZABETH ANNE GARINO, and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

ELIZABETH ANNE GARINO, on behalf of
herself and all others similarly situated, and the
general public, and as an “aggrieved employee”
on behalf of other “aggrieved employees” and
the State of California under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

OCEAN HILLS RECOVERY, INC., a
California corporation; CAPISTRANO BEACH
RECOVERY CENTER LLC, a California
limited liability company; and DOES 1–50,
inclusive,

Defendants.

Case No. 30-2024-01399897-CU-OE-CXC

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED

Filed: 05/14/2024

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3 Plaintiff, Elizabeth Anne Garino (hereafter “Plaintiff” or “Garino”), on behalf of herself
4 and all others similarly situated, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Ocean Hills
9 Recovery, Inc., a California corporation, Capistrano Beach Recovery Center LLC, a California
10 limited liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
12 and other similarly situated workers, the general public, and as an “aggrieved employee” on behalf
13 of other “aggrieved employees” and the State of California under the Labor Code Private
14 Attorneys General Act of 2004, for unpaid wages, statutory penalties, interest, and related relief.
15 These claims are based on Defendants’ failures to:

16 (A) Pay all wages, including minimum, regular, overtime and doubletime
17 wages, earned for all hours worked at the correct rates of pay;

18 (B) Provide all meal periods;

19 (C) Authorize and permit all rest breaks;

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

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

22 (F) Indemnify for necessary work-related expenditures;

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

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

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

28 **II. THE PARTIES**

1 3. Plaintiff Elizabeth Anne Garino is a resident of California. At all relevant times,
2 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050
3 and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).

4 4. Defendant Ocean Hills Recovery, Inc. is a corporation organized and existing
5 under the laws of California and also a citizen of California based on Plaintiff’s information and
6 belief.

7 5. Defendant Capistrano Beach Recovery Center LLC is a limited liability company
8 organized and existing under the laws of California and also a citizen of California based on
9 Plaintiff’s information and belief.

10 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
11 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
12 is informed and believes and thereon alleges that said Defendants are legally responsible for the
13 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
14 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
15 when ascertained.

16 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
18 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
19 within the course and scope of such agency, employment, direction and control, and with the
20 approval and ratification of each of the other Defendants.

21 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
22 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
23 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
24 Members or otherwise complying with their rights in accordance with applicable California labor
25 laws as alleged herein.

26 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
27 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
28 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-

described class in accordance with applicable laws as alleged herein.

III. CLASS ALLEGATIONS

10. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

11. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California hourly, non-exempt employees, including but not limited to, behavioral health technicians, drivers, overnight behavioral health technicians, lead behavioral health technicians, and support staff members, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, and rest period premium, wages;

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

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

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

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

9 F. Whether Defendants willfully failed to provide the class with timely final
10 wages;

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

13 H. Whether Class Members are entitled to restitution of money or property
14 that Defendants may have acquired from them through alleged Labor Code violations.

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

19 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
20 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
21 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
22 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
23 Members.

24 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
25 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
26 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
27 Plaintiff and absent Class Members.

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

11 **IV. STATEMENT OF FACTS**

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

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

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

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25 (7) Establishments providing veterinary or other animal care services.

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27 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
28 Garino, and all of the Class Members were covered by the Wage Order because the Defendants

1 operated, and Garino, and all of the Class Members, worked for one or more drug and alcohol,
2 alcohol rehabilitation centers. Accordingly, Garino and all of the other Class Members are entitled
3 to the protections the Wage Order provides.

4 20. On approximately December 23, 2022, the Defendants began to employ Garino in
5 Dana Point, San Juan Capistrano, Los Angeles County in the position of hourly, non-exempt
6 Behavioral Health Technician/Driver. The Defendants continuously employed her in that capacity
7 until on or about November 17, 2023 when her employment ended.

8 21. At all relevant times, the Defendants issued wages to Garino and all of the other
9 Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
10 times, the Defendants classified Garino and all of the other Class Members as non-exempt
11 employees entitled to the protections of the Labor Code and the Wage Order.

12 22. At all relevant times, the Defendants failed to compensate Garino and all of the
13 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
14 Defendants required Garino and the other Class Members to remain on-call without pay. The
15 Defendants also required Garino and the other Class Members to undergo training without pay.
16 Further, the Defendants also required Garino and the other Class Members to perform duties for
17 clients, answer work-related-text messages phone calls, and email messages, and make deliveries
18 off-the-clock.

19 23. At all relevant times, the Defendants failed to compensate Garino and all of the
20 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
21 in a week, and for the first eight hours of the seventh day of the workweek. Because Garino and
22 the Class Members worked more than eight hours in a day, more than 40 hours in a week, and on
23 the seventh day in the same workweek, the Defendants owed them overtime premium wages of
24 time and one half their regular rates of pay for their work on-call, training, and other off-the-clock
25 duties described above. However, the Defendants failed to pay overtime premium rates to Garino
26 and the Class Members for such work.

27 24. At all relevant times, the Defendants failed to compensate Garino and all of the
28 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over

1 the first eight of the seventh day of the workweek. Because Garino and the Class Members worked
2 more than 12 hours in a day, and over eight hours on the seventh day in the same workweek, the
3 Defendants owed them doubletime premium wages of time and one half their regular rates of pay
4 for their work on-call, training, and other off-the-clock duties described above. However, the
5 Defendants failed to pay doubletime premium rates to Garino and the Class Members for such
6 work.

7 25. At all relevant times, the Defendants failed to provide Garino and all of the other
8 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Garino
9 and the other Class Members to take their meal periods on duty. The Defendants also failed to
10 pay premium wages for days on which they failed to provide Garino and all of the other Class
11 Members with meal periods as required by law.

12 26. At all relevant times, the Defendants failed to authorize and permit Garino and all
13 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
14 or major portion thereof. The Defendants required Garino and the other Class Members to take
15 their rest breaks on duty. The Defendants also failed to pay premium wages for days on which
16 they failed to authorize and permit Garino and all of the other Class Members to take rest breaks
17 as required by law.

18 27. At all relevant times, the Defendants required Garino and all of the other Class
19 Members to incur certain business expenses in the course of performing their duties. The
20 Defendants required Garino and all of the other Class Members to supply mobile phones,
21 transportation between work sites, and uniforms to perform their job duties. However, the
22 Defendants did not provide these items and did not reimburse Garino and the other Class Members
23 for these items.

24 28. At all relevant times, the Defendants failed to issue to Garino and all of the other
25 Class Members complete and accurate wage statements that state all hours worked at the correct
26 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
27 the wage statements they issued to Garino and all of the other Class Members the unpaid wages
28 discussed above. The wage statements fail to state all minimum wages earned, all regular wages

1 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
2 earned, all rest break premium wages earned, and related information.

3 29. At all relevant times, the Defendants also failed to timely pay Garino and all of the
4 other Class Members all earned wages as described above during and at the conclusion of
5 employment.

6 30. At all relevant times, the Defendants failed to maintain accurate employee records
7 of Garino and all of the other Class Members.

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

- 10 A. Not provided with all off duty meal periods;
11 B. Not authorized and permitted to take all rest break periods;
12 C. Not paid one hour's pay for each workday in which Defendants failed to
13 authorize and permit them to take one or more timely rest periods;
14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely meal periods;
16 E. Not paid all wages earned, including, but not limited to, minimum, regular,
17 overtime, and doubletime wages for work performed while clocked out;
18 F. Not indemnified for all necessary business expenditures incurred during
19 the discharge of their duties;
20 G. Not provided with accurate and complete wage statements; and
21 H. Not timely paid all earned and unpaid wages at the time their employment
22 ended.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
25 **CORRECT RATES**

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

27 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

28 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

33. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

34. Section 2 of the Wage Order defines “hours worked” as “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.”

35. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee

shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

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

29 C.F.R. § 778.223

"The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time during which an employee is necessarily required to

1 be on the employer's premises, on duty or at a prescribed work place."
2 *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-
3 Portal Act did not change the rule except to provide an exception for
4 preliminary and postliminary activities. See Section 785.34."

5 29 C.F.R. § 785.7.

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

14 29 C.F.R. § 785.18.

15 "Bona fide meal periods are not worktime. Bona fide meal periods do not
16 include coffee breaks or time for snacks. These are rest periods. The
17 employee must be completely relieved from duty for the purposes of
18 eating regular meals. Ordinarily 30 minutes or more is long enough for a
19 bona fide meal period. A shorter period may be long enough under special
20 conditions. The employee is not relieved if he is required to perform any
21 duties, whether active or inactive, while eating. For example, an office
22 employee who is required to eat at his desk or a factory worker who is
23 required to be at his machine is working while eating. *Culkin v. Glenn L.*
24 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d
25 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
26 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
27 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
28 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton*
v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para.
61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))"

29 29 C.F.R. § 785.19. Healthcare employees who are required to wear pagers and respond to patient
30 emergencies during meal breaks are entitled to payment from their employer for meal breaks
31 because their employer has not fully relieved them of their responsibilities during those times.
32 *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also

1 *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)
2 (employees required to work during half hour meal break given that they had to stay at the facility
3 and be available to respond to requests to return or check out weapons and equipment); *Wahl v.*
4 *Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police
5 officers stated a claim under the Fair Labor Standards Act where they alleged that they were not
6 paid for meal periods but were required to remain within a certain area, respond to emergencies
7 and citizen requests, and remain accessible).

8 37. Section 4 of the Wage Order requires an employer to pay non-exempt employees
9 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
10 an employer has actual or constructive knowledge that employees are working.

11 38. Labor Code section 510 states:

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

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

25 40. Labor Code section 1197 makes it unlawful for an employer to pay an employee
26 less than the minimum wage required under the applicable Wage Order for all hours worked
27 during a payroll period.

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

42. In conjunction, these provisions of the Labor Code require employers to pay non-
exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours

1 worked, including unrecorded hours when the employer knew or reasonably should have known
2 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
3 Cal.4th 575, 585.)

4 43. At all relevant times during the applicable limitations period, Defendants failed to
5 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
6 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
7 doubletime hours, respectively, that they worked at the correct rates of pay.

8 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
10 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
11 rates of pay as required by California law.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **Lab. Code §§ 226.7 and 512**

15 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

16 45. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

17 46. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

20 47. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor fixed by the
22 commission shall be the maximum hours of work and the standard conditions of
23 labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

defined by federal regulations:

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

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be

1 counted as hours worked. Compensable time of rest periods may not be
2 offset against other working time such as compensable waiting time or on-
3 call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,
1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.
Cal. 1945))

4 29 C.F.R. § 785.18.

5
6 Bona fide meal periods are not worktime. Bona fide meal periods do not
7 include coffee breaks or time for snacks. These are rest periods. The
8 employee must be completely relieved from duty for the purposes of
9 eating regular meals. Ordinarily 30 minutes or more is long enough for a
10 bona fide meal period. A shorter period may be long enough under special
11 conditions. The employee is not relieved if he is required to perform any
12 duties, whether active or inactive, while eating. For example, an office
13 employee who is required to eat at his desk or a factory worker who is
14 required to be at his machine is working while eating. *Culkin v. Glenn L.*
15 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d
16 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
17 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
18 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
19 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
20 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton*
21 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.
22 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
23 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
24 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
25 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

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

1 were required to remain within a certain area, respond to emergencies and citizen
2 requests, and remain accessible).

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

12 Wage Order 5, § 11(D).

13 49. In relevant part, In relevant part, California Labor Code § 512 states:

14 An employer shall not employ an employee for a work period of
15 more than five hours per day without providing the employee with
16 a meal period of not less than 30 minutes, except that if the total
17 work period per day of the employee is no more than six hours, the
18 meal period may be waived by mutual consent of both the
19 employer and employee.

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

26 50. In relevant part, Section 11 of the Wage Order states:

27 **Meal Periods**

28 (A) No employer shall employ any person for a work period of
more than five (5) hours without a meal period of not less
than 30 minutes, except that when a work period of not
more than six (6) hours will complete the day's work the
meal period may be waived by mutual consent of the
employee and the employer. Unless the employee is
relieved of all duty during a 30 minute meal period, the
meal period shall be considered an 'on duty' meal period
and counted as time worked. An 'on duty' meal period shall

1 be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by
3 written agreement between the parties an on-the-job paid
4 meal period is agreed to. The written agreement shall state
5 that the employee may, in writing, revoke the agreement at
6 any time.

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

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

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

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

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

53. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
required Garino and the other Class Members to take their meal periods on duty.

54. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members

1 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
2 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
3 Members with timely meal periods.

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

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

11 57. By reason of the above, Plaintiff and the Class Members are entitled to premium
12 wages for workdays in which one or more meal periods were not provided to them pursuant to
13 California Labor Code § 226.7.

14 **THIRD CAUSE OF ACTION**

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

16 **Lab. Code § 226.7**

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

18 58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

22 60. In relevant part, California Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work and
25 the standard conditions of labor for employees. The employment
26 of any employee for longer hours than those fixed by the order or
27 under conditions of labor prohibited by the order is unlawful.

28 ///

///

///

1 61. In relevant part, Section 12 of the Wage Order states:

2
3 **Rest Periods**

4 (A) Every employer shall authorize and permit all employees
5 to take rest periods, which insofar as practicable shall be in the
6 middle of each work period. The authorized rest period time shall
7 be based on the total hours worked daily at the rate of ten (10)
8 minutes net rest time per four (4) hours or major fraction thereof.
9 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

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

14 62. In relevant part, California Labor Code § 226.7 states:

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

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

27 63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
28 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period

1 of work, or major fraction thereof.

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

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

9 66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
11 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
12 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
13 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
14 to authorize and permit them to take 10-minute rest periods every four hours worked or major
15 fraction thereof.

16 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
18 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
19 take all rest breaks required by California law.

20 68. Defendants failed to provide Plaintiff with all required rest breaks in accordance
21 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
22 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
23 which resulted in Defendants not providing the Class Members with all rest breaks required by
24 California law.

25 69. Defendants failed to pay Plaintiff the additional wages required by California
26 Labor Code § 226.7 for all rest breaks not provided to himher. Plaintiff is informed and believes
27 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
28 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not

1 providing the Class Members with additional wages for all rest breaks not provided to them as
2 required by California Labor Code § 226.7.

3 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in amounts subject to proof to the extent they were not paid additional wages
5 owed for all rest breaks not provided to them.

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

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **Lab. Code § 2802**

12 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

13 72. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

21 76. As described above, the Defendants required Garino and all of the other Class
22 Members to incur certain business expenses in the course of performing their duties. The
23 Defendants required Garino and all of the other Class members to supply mobile phones,
24 transportation between work sites, and uniforms to perform their job duties. However, the
25 Defendants did not provide these items and did not reimburse Garino and the other Class members
26 for these items.

27 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
28 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'

1 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
2 during the course of performing their duties.

3 **FIFTH CAUSE OF ACTION**

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

5 **Lab. Code § 226**

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

7 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

9 78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

13 A. Gross wages earned;

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

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

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

21 E. Net wages earned;

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

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

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

28 I. All applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

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

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

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

21 82. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages for work they performed off-the-clock
28 after clocking-out (as described above). Defendants knowingly and intentionally did not issue

1 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
2 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
3 Members that state all minimum wages earned, all regular wages earned, all overtime wages
4 earned, all doubletime wages earned, all meal period premium wages earned, and all rest break
5 premium wages earned.

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

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

20 **SIXTH CAUSE OF ACTION**

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

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

23 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

1 87. Labor Code § 201 provides that all earned and unpaid wages of an employee who
2 is discharged are due and payable immediately at the time of discharge.

3 88. Labor Code § 202 provides that all earned and unpaid wages of an employee who
4 quits after providing at least 72-hours notice before quitting are due and payable at the time of
5 quitting and that all earned and unpaid wages of an employee who quits without providing at least
6 72-hours notice before quitting are due and payable within 72 hours.

7 89. The Defendants failed to pay Garino and all of the other Class Members whose
8 employment ended all of the earned but unpaid wages described above by the conclusion of their
9 employment with Garino, including minimum wages, regular wages, overtime wages, doubletime
10 wages, unprovided meal period premium wages, and unprovided rest break premium wages.

11 90. By failing to pay such earned wages to Plaintiff and the Class Members,
12 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
13 § 201 or § 202.

14 91. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
15 and the Class Members all of their earned and unpaid wages (described above) have been willful
16 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
17 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
18 they have had the ability to comply with those legal requirements.

19 92. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
20 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
21 penalties for each Class Member.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

25 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

26 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 94. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections

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

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **Lab.Code §§ 2698, *et seq.***

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

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

25 100. The "Aggrieved Employees" are all members of the Class defined above who
26 Defendants employed during the period beginning May 14, 2023, and ending on the date that final
27 judgment is entered in this action.

28 101. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
or 204.2, earned by any person in any employment are due and payable twice

1 during each calendar month, on days designated in advance by the employer as the
2 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
3 calendar month shall be paid for between the 16th and the 26th day of the month
4 during which the labor was performed, and labor performed between the 16th and
5 the last day, inclusive, of any calendar month, shall be paid for between the 1st
6 and 10th day of the following month. ...

7
8 (b) (1) Notwithstanding any other provision of this section, all wages
9 earned for labor in excess of the normal work period shall be paid no later than the
10 payday for the next regular payroll period.

11
12 (2) An employer is in compliance with the requirements of subdivision (a) of
13 Section 226 relating to total hours worked by the employee, if hours worked in
14 excess of the normal work period during the current pay period are itemized as
15 corrections on the paystub for the next regular pay period. Any corrections set out
16 in a subsequently issued paystub shall state the inclusive dates of the pay period
17 for which the employer is correcting its initial report of hours worked.

18
19 (c) However, when employees are covered by a collective bargaining
20 agreement that provides different pay arrangements, those arrangements shall
21 apply to the covered employees.

22
23 (d) The requirements of this section shall be deemed satisfied by the payment
24 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
25 more than seven calendar days following the close of the payroll period.

26
27 102. Defendants paid wages to employees on regular intervals. Defendants, however,
28 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
intervals for all wages earned and all hours worked.

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

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

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

1 A. For violations of California Labor Code § 204, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
3 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
4 (penalty amounts established by California Labor Code § 210).

5 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
6 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
7 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
8 California Labor Code § 226.3).

9 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
11 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
12 established by California Labor Code § 558).

13 D. For violations of California Labor Code § 1174, five hundred dollars
14 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
15 amounts established by Labor Code § 1174.5).

16 E. For violations of California Labor Code § 1197, one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
18 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
19 (regardless of whether the initial violations were intentionally committed) (penalty amounts
20 established by California Labor Code § 1197.1).

21 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
22 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
23 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
24 period for each subsequent violation (penalty amounts established by California Labor Code §
25 2699(f)(2)).

26 106. Plaintiff has complied with the procedures for bringing suit specified in California
27 Labor Code § 2699.3. By letter dated May 14, 2024, Plaintiff filed written notice online with the
28 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
to Defendants of the specific provisions of the California Labor Code alleged to have been
violated, including the facts and theories to support the alleged violations. A true and correct copy
of the notice to the LWDA dated May 14, 2024 is attached as Exhibit A. Plaintiff submitted her

1 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
2 within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA
3 will provide written notice to Plaintiff informing her that it does not intend to investigate these
4 allegations.

5 107. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
7 connection with their claims for civil penalties.

8 **V. PRAYER FOR RELIEF**

9 108. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
10 relief and judgment against Defendants as follows:

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

13 B. An order that Plaintiff be appointed class representative;

14 C. An order that counsel for Plaintiff be appointed class counsel;

15 D. Unpaid wages, including minimum, regular, overtime, double-time, split
16 shift, vacation, missed meal period, AND missed rest period wages;

17 E. Liquidated damages;

18 F. Statutory penalties, including waiting time penalties;

19 G. Civil penalties;

20 H. Restitution;

21 I. Declaratory relief;

22 J. Actual damages;

23 K. Pre-judgment interest;

24 L. Costs of suit;

25 M. Reasonable attorneys' fees; and

26 N. Such other relief as the Court deems just and proper.

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VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: September 13, 2024

By:

DAVID G. SPIVAK, Attorney for
Plaintiff, ELIZABETH ANNE
GARINO, and all others similarly
situated

EXHIBIT A



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 14, 2024

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

Re: Elizabeth Anne Garino / Ocean Hills Recovery

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Elizabeth Anne Garino (hereafter “Garino” or “Complainant”) provides notice that Ocean Hills Recovery, Inc., a California corporation, Capistrano Beach Recovery Center LLC, a California limited liability company, and related entities (collectively “the Ocean Hills Recovery Employers” or “the Employers”) violated his rights and those of all other individuals the Ocean Hills Recovery Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to, behavioral health technicians, drivers, overnight behavioral health technicians, lead behavioral health technicians, and support staff members, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code sections. On behalf of herself and all other Aggrieved Employees, Garino hereby provides this notice to the Labor & Workforce Development Agency and the Ocean Hills Recovery Employers and their agents and representatives.

At all relevant times, the Ocean Hills Recovery Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout

California. Garino and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately December 23, 2022, the Ocean Hills Recovery Employers began to employ Garino in Dana Point, San Juan Capistrano, Los Angeles County in the position of hourly, non-exempt Behavioral Health Technician and Driver. The Ocean Hills Recovery Employers continuously employed her in that capacity until on or about November 17, 2023 when her employment ended.

At all relevant times, the Ocean Hills Recovery Employers issued wages to Garino and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Ocean Hills Recovery Employers classified Garino and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to remain on-call without pay. The Ocean Hills Recovery Employers also required Garino and the other Aggrieved Employees to undergo training without pay. Further, the Ocean Hills Recovery Employers also required Garino and the other Aggrieved Employees to perform duties for clients, answer work-related-text messages, phone calls, and email messages, and make deliveries off-the-clock.

The Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Because Garino and the Aggrieved Employees worked more than eight hours in a day,

more than 40 hours in a week, and on the seventh day in the same workweek, the Ocean Hills Recovery Employers owed them overtime premium wages of time and one half their regular rates of pay for their work on-call, training, and other off-the-clock duties described above. However, the Ocean Hills Recovery Employers failed to pay overtime premium rates to Garino and the Aggrieved Employees for such work.

The Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Because Garino and the Aggrieved Employees worked more than 12 hours in a day, and over eight hours on the seventh day in the same workweek, the Ocean Hills Recovery Employers owed them doubletime premium wages of time and one half their regular rates of pay for their work on-call, training, and other off-the-clock duties described above. However, the Ocean Hills Recovery Employers failed to pay doubletime premium rates to Garino and the Aggrieved Employees for such work.

At all relevant times, the Ocean Hills Recovery Employers failed to provide Garino and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to take their meal periods on duty. The Ocean Hills Recovery Employers also failed to pay premium wages for days on which failed to provide Garino and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Ocean Hills Recovery Employers failed to authorize and permit Garino and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to take their rest breaks on duty. The Ocean Hills Recovery Employers also failed to pay premium wages for days on which they failed to authorize and permit Garino and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Ocean Hills Recovery Employers required Garino and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Ocean Hills Recovery Employers required Garino and all of the other Aggrieved Employees to supply mobile phones, transportation between work sites, and uniforms to perform their job duties. However, the Ocean Hills Recovery Employers did not provide these items and did not reimburse Garino and the other Aggrieved Employees for these items.

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

The Ocean Hills Recovery Employers also failed to timely pay Garino and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Ocean Hills Recovery Employers failed to maintain accurate employee records of Garino and all of the other Aggrieved Employees.

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

- (a) The Ocean Hills Recovery Employers failed to pay Garino and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

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

Accordingly, Garino now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Ocean Hills Recovery Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

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

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Ocean Hills Recovery Employers, Garino, and all of the Aggrieved Employees were covered by the Wage Order because the Ocean Hills Recovery Employers operated, and Garino, and all of the Aggrieved Employees, worked for one or more drug and alcohol rehabilitation facilities. Accordingly, Garino and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

"...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in

active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...” 29 C.F.R. § 778.223

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

“Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be

counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))” 29 C.F.R. § 785.18.

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), *aff’d* 197 F. 2d 981 (C.A. 8, 1952), *cert. denied* 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), *aff’d* 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); *aff’d* 136 F. 2d 359 (C.A. 10, 1943); *cert. denied* 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

Healthcare employees who are required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph’s Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr.

14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

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

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

The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to remain on-call without pay. The Ocean Hills Recovery Employers also required Garino and the other Aggrieved Employees to undergo training without pay. Further, the Ocean Hills Recovery Employers also required Garino and the other Aggrieved Employees to perform duties for clients, answer work-related-text messages phone calls, and email messages, and make deliveries off-the-clock. Because Garino and the Aggrieved Employees worked more than eight hours in a day, more than 40 hours in a week, and on the seventh day in the same workweek, the Ocean Hills Recovery Employers owed them overtime premium wages of time and one half their regular rates of pay for their work on-call, training, and other off-the-clock duties described above. However, the Ocean Hills Recovery Employers failed to pay overtime premium rates to Garino and the Aggrieved Employees for such work. Because Garino and the Aggrieved Employees worked more than 12 hours in a day, and over eight hours on the seventh day in the same workweek, the Ocean Hills Recovery Employers owed them doubletime premium wages of time and one half their regular rates of pay for

their work on-call, training, and other off-the-clock duties described above. However, the Ocean Hills Recovery Employers failed to pay doubletime premium rates to Garino and the Aggrieved Employees for such work.

At all relevant times during the applicable limitations period, the Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Garino now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

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

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

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

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

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

“The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the

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

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

“Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any

duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))”

29 C.F.R. § 785.19

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

“Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods.

In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.”

Wage Order 5, § 11(D).

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Ocean Hills Recovery Employers failed to provide Garino and all of the other Aggrieved Employees with all timely meal periods. The Ocean Hills Recovery Employers denied Garino and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to take their meal periods on duty. Furthermore, the Ocean Hills Recovery Employers failed to pay premium wages for days on which they failed to provide Garino and all of the other Aggrieved Employees with timely meal periods. Accordingly, Garino now seeks civil penalties for these Labor Code violations that the Ocean Hills Recovery Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net

rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

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

The Ocean Hills Recovery Employers failed to authorize and permit Garino and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Ocean Hills Recovery Employers did not seek an exemption from the rest period protections of the Wage Order from the

California Division of Labor Standards Enforcement. The Ocean Hills Recovery Employers required Garino and the other Aggrieved Employees to take their rest breaks on duty. Moreover, the Ocean Hills Recovery Employers failed to pay Garino and all of the other Aggrieved Employees premium wages on workdays the Ocean Hills Recovery Employers failed to provide Garino and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Garino now seeks civil penalties for these Labor Code violations that the Ocean Hills Recovery Employers have committed against her and all of the other Aggrieved Employees as follows:

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

Failure to Reimburse for Expenses

(Lab. Code §§ 1198 and 2802)

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

Additionally, the Wage Order states,

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

...

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

Wage Order, § 9(B).

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

As described above, the Ocean Hills Recovery Employers required Garino and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Ocean Hills Recovery Employers required Garino and all of the other Aggrieved Employees to supply mobile phones, transportation between work sites, and uniforms to perform their job duties. However, the Ocean Hills Recovery Employers did not provide these items and did not reimburse Garino and the other Aggrieved Employees for these items. Accordingly, Garino seeks civil penalties for these Labor Code violations that the Ocean Hills Recovery Employers have committed against her and all of the other Aggrieved Employees as follows:

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

Failure to Provide Accurate Wage Statements

(Lab. Code § 226)

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Ocean Hills Recovery Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Ocean Hills Recovery Employers failed to state in the wage statements they issued to Garino and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Ocean Hills Recovery Employers knowingly and intentionally failed to state on the wage statements they issued to Garino and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state .

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

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

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

The Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, at the intervals stated above. As a result, the Ocean Hills Recovery Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Garino now seeks civil penalties for the Labor Code violations that the Ocean Hills Recovery Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment

(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;

but the wages shall not continue for more than 30 days.

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

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

Failure to Maintain Accurate Employment Records

(Lab. Code §§ 1174 & 1198)

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect

records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

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

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

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

The Ocean Hills Recovery Employers failed to compensate Garino and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including . As a result, the Ocean Hills Recovery Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Garino and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Garino seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

Conclusion

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

Sincerely,

A handwritten signature in black ink that reads "David Spivak". The signature is written in a cursive, flowing style.

David Spivak, Esq.
David@spivaklaw.com

cc: Elizabeth Anne Garino
Walter L. Haines

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PROOF OF SERVICE

State of California,
County of Los Angeles

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

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

On September 13, 2024, I served the foregoing document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT; AND SUMMONS ON FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

ATTORNEY FOR OCEAN HILLS RECOVERY, INC.,

Elyssa Katherine Kulas, Esq.
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ekulas@ferrisbritton.com

ATTORNEY FOR Capistrano Beach Recovery Center LLC

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

EXECUTED on September 13, 2024, at Fresno, California.

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



NAZIE ELENA BAHARLOO



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