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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 6/29/2023
By /s/ Ashlee Nelson
Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

Richard Tolentino, on behalf of himself,
all others similarly situated, and the
general public,

Plaintiffs,

vs.

24-Seven Senior Care LLC, a California
Limited Liability Company, and DOES 1
through 100, inclusive,

Defendants.

Case No. 23-CIV-00710

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

CLASS ACTION

- 1. FAILURE TO PROVIDE SICK LEAVE** (Lab. Code § 246, 247.5);
- 2. FAILURE TO PAY OVERTIME WAGES** (Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders);
- 3. FAILURE TO PROVIDE MEAL AND REST PERIODS** (Lab. Code §§ 226.7, 512; IWC Wage Orders);
- 4. FAILURE TO PAY FINAL WAGES ON TIME** (Lab. Code §§ 201 *et seq.*);
- 5. FAILURE TO FURNISH WAGE AND HOUR STATEMENTS** (Lab. Code §§ 226(e), 226.3); and
- 6. UNFAIR BUSINESS PRACTICES** (Bus. & Prof. Code §§ 17200 *et seq.*).
- 7. PRIVATE ATTORNEY GENERAL ACT** (Lab. Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

1 This Complaint is brought by Plaintiff Richard Tolentino (“Plaintiff” and/or “Mr.
2 Tolentino”), on behalf of himself, all others similarly situated, and the general public, against
3 his, Defendant 24-Seven Senior Care LLC (“24-Seven”), and DOES 1-100, inclusive. Plaintiff
4 hereby demands a jury trial on all causes of action. Plaintiff alleges the following:

5 **PLAINTIFF**

6 1. At all times material herein, Plaintiff Richard Tolentino was and is a competent
7 adult and resident of the State of California, San Mateo County. Plaintiff began working for
8 Defendants as a Home Caregiver January 2, 2017. While working for Defendants, Plaintiff’s job
9 duties included but were not limited to providing home health care services including frequent
10 housekeeping duties and preparing meals for individuals.

11 **DEFENDANTS**

12 2. At all times material herein, Defendant 24-Seven was and is a California Limited
13 Liability Company registered to do business in the State of California, including but not limited
14 to conducting business within San Mateo County with its corporate headquarters located in Foster
15 City, California. Defendant 24-Seven is in the senior home care industry. On information and
16 belief, Defendant 24-Seven is in the senior home care industry. All relevant times alleged herein,
17 Plaintiff is informed and believes that Defendant 24-Seven is authorized to and does conduct
18 business in the State of California in the senior home care industry including but not necessarily
19 limited to 860 Peary Ln, Foster City, CA 94404.

20 3. Plaintiff is informed and believes and, based thereon, alleges that, within the Class
21 Period, Defendants conducted business within the senior home care industry. In so doing, there
22 are hundreds, if not thousands, of individuals in recent years alone who qualify to participate as a
23 Class Member in this action.

24 4. The defendants identified as DOES 1 through 100, inclusive, were, at all times
25 herein-mentioned, agents, business affiliates, successors- and/or predecessors-in-interest,
26 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
27 Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned,
28 each of the defendants identified as DOES 1 through 100, inclusive, employed, and/or exercised

control over the conditions of Plaintiff and Class Members which led to the instant lawsuit and which are described herein. In doing the acts herein alleged, each Defendant is liable and responsible to Plaintiff and Class Members for the acts of every other Defendant. The true names and capacities of the DOE Defendants, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such DOE Defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes that the DOE Defendants are residents of the State of California. Plaintiff will amend this complaint to show such DOE Defendants' true names and capacities when they are known.

5. Plaintiff is informed and believes and thereon alleges that, unless otherwise indicated, each Defendant was the agent and/or employee of every other Defendant within the course and scope of said agency and/or employment, with the knowledge and/or consent of said Defendant.

6. To the extent any allegation contradicts another allegation, they are to be construed as "alternative" theories.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of San Mateo, because Defendant 24-Seven transacts business within this county at 860 Peary Lane, Foster City, CA 94404. Plaintiff and Class Members performed work for Defendants and experienced the legal violations that are the subject of this Complaint in the County of San Mateo.

8. This Court has jurisdiction over the Plaintiff's and Class Members' claims for damages, interest thereon, related penalties, injunctive and other equitable relief, restitution of ill-gotten benefits arising from Defendants' unlawful, unfair, and/or fraudulent business practices, and attorneys' fees and costs pursuant to, *inter alia.*, California Business and Professions Code sections 17200-17208, and the statutes cited herein.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Pursuant to California Labor Code section 2699.5, Plaintiff Tolentino has exhausted all administrative remedies and satisfied all private, administrative and judicial

prerequisites to the institution of this action, insofar as such prerequisites pertain to Plaintiff's cause of action brought pursuant to the Private Attorney General's Act ("PAGA"), California Labor Code sections 2699 *et seq.* Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. Plaintiff has given written notice, by certified mail, to the Labor and Workforce Development Agency ("LWDA") and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support those violations. More than 65 days have passed, and no response has been received from the LWDA. Accordingly, Plaintiff has satisfied all prerequisites to pursuing PAGA claims.

10. Plaintiff has satisfied all private, administrative and judicial prerequisites to the institution of this action.

11. The California Workers' Compensation Act does not preempt this action because Defendants' unlawful practices, as alleged herein, are not risks or conditions of employment. Plaintiff is not required to satisfy any further private, administrative, or judicial prerequisites to the institution of this action, insofar as such prerequisites pertain to any of the remaining causes of action in this complaint.

FACTS REGARDING PLAINTIFF'S INDIVIDUAL CAUSES OF ACTION

12. Plaintiff began his employment with Defendants on January 17, 2017. At all times during his employment with Defendants, Plaintiff was performing his job duties satisfactorily and received positive performance reviews.

13. Plaintiff has never been allowed to take sick leave. Defendants denied sick leave to its employees, including Plaintiff. When Plaintiff asked about sick leave, Defendant stated explicitly that it has never offered sick leave.

14. Defendant did not pay overtime to employees when they worked in excess of 8 hours in one shift, including Plaintiff. Even when Plaintiff worked twenty-four (24) straight hours, he would be paid the same hourly rate.

1 15. Defendant did not provide proper meal and rest breaks to its employees, including
2 Plaintiff. Defendant does not have any policy describing entitlement to meal and rest breaks. In
3 fact, Defendant told employees there were not permitted to leave the premises.

4 16. Defendant did not provide employees timely and accurate wage and hour
5 statements, including Plaintiff. Because Defendant did not pay for overtime or meal and rest
6 breaks, Plaintiff's paychecks were consistently short. Thus, his wage statement was not accurate.

7 17. Plaintiff was terminated on October 28, 2022.

8 18. Defendant did not pay final wages on time to its employees, including Plaintiff.
9 Defendant did not pay for overtime or meal and rest breaks, and thus, Plaintiff's paychecks were
10 consistently short. Thus, he still has not received all of his wages, and it has been more than thirty
11 (30) days.

12 19. Plaintiff spends a large percentage of his time performing housekeeping duties
13 such as cleaning the house or preparing meals.

14
15 **FACTS REGARDING PLAINTIFF'S CLASS ACTION CAUSES OF ACTION**

16 20. All policies and practices described herein were in place at all of Defendants'
17 business locations in California. As such, all members of the classes were subject to these same
18 unlawful policies and practices in violation of California law. Plaintiff is informed and believes
19 that Defendants knowingly engaged in the unlawful acts alleged herein, thereby enjoying a
20 significant competitive edge over other companies within its industry. In many, if not all cases,
21 these common practices have led to willful violations of California and federal law, entitling
22 Plaintiff and Class Members to a recovery, pursuant to, *inter alia*, the statutes cited herein.

23 21. Plaintiff brings this action on behalf of himself and as a class action on behalf of
24 the following Hourly Employee Class and Terminated Subclass

25 Class: All non-exempt employees who worked for Defendant, in the State of
26 California at any time on or after the date that is four years prior to when the
27 Complaint was filed.
28

Terminated Subclass: All persons who are eligible for membership in the Class but who are no longer employed by Defendant.

Class Members can be identified through Defendants' records including employee timekeeping and payroll records.

22. Defendants and their officers and directors are excluded from any class defined in the preceding paragraphs.

23. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable. The Class and subclass defined herein satisfy all class action requirements:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is, at least, sixty (60) individuals currently employed. Thus, there would likely be approximately one hundred (100) employees when looking back four (4) years. Membership in the Classes will be determined by and upon analysis of records maintained by Defendants.
- b. Commonality: Plaintiff and Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
 - 1) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code sections 17200 *et seq.* by failing to pay all wages due to Plaintiff and Class Members;
- c. Typicality: Plaintiff's claims are typical of the claims of Class Members. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

- 1 e. Adequacy of Representation: Plaintiff is an adequate representative of the
2 Plaintiff Classes, in that Plaintiff's claims are typical of those of Class
3 Members, and Plaintiff has the same interests in the litigation of this case
4 as Class Members. Plaintiff is committed to vigorous prosecution of this
5 case and has retained competent counsel experienced in litigation of this
6 nature. Plaintiff is not subject to any individual defenses unique from those
7 conceivably applicable to the class as a whole. Plaintiff anticipates no
8 management difficulties in this litigation.

9
10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PROVIDE SICK LEAVE**

12 (Lab. Code §§ 246, 247.5)

13 (*On behalf of Plaintiff as an individual against all Defendants*)

14 24. Plaintiff incorporates in this cause of action each and every allegation of the
15 preceding paragraphs, with the same force and effect as though fully set forth herein.

16 25. Jurisdiction is invoked in this court pursuant to the public policy and common law
17 of the State of California, pursuant to Labor Code sections 246 and 247.5.

18 26. Labor Code section 246 requires that California employees who work at least 30
19 days within one year of starting employment must accrue paid sick leave. Such employees
20 generally must accrue at least one hour of sick leave for every thirty (30) hours worked. Exempt
21 employees are considered to work forty (40) hours weekly for purposes of sick leave accrual under
22 Labor Code section 246.

23 27. Labor Code section 247.5 requires that the employer maintain records for at least
24 three years of sick leave that has accrued and sick leave that has been used.

25 28. Defendants did not provide sick leave in compliance with Section 246. Moreover,
26 Defendants did not maintain accurate records of accrued and used sick leave.

27 29. As a proximate result of Defendants' wrongful acts, Plaintiff has suffered, and
28 continues to suffer, substantial losses, entitling Plaintiff to recover for unpaid sick leave and other
compensatory damages.

30. Plaintiff is informed and believes and, based thereon, alleges that all Defendants,
including the Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited,
compelled, coerced, or conspired to commit one or more of the acts alleged in this Cause of
Action.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders)
(*On behalf of Plaintiff and all Class Members against all Defendants*)

31. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

32. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

33. Labor Code section 510 defines a day's work as 8 hours and states that any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay. Pursuant to Labor Code section 1194(a), a plaintiff may bring a civil action for overtime wages to recover wages, interest, penalties, attorney's fees and costs.

34. Plaintiff and Class Members are not exempt from receiving overtime compensation. At all times relevant hereto, Defendants treated Plaintiff and other similarly situated persons as exempt from the right to be paid overtime hours.

35. Defendants required Plaintiff and Class Members to work in excess of 8 hours per day, and/or in excess of 40 hours per week. Defendants misclassified Plaintiff and Class Members as exempt from California's overtime laws. Defendants did so despite the fact that Plaintiff and Class Members did not meet the exemption criteria because, among other things, Plaintiff and Class Members, were not employees exempt from the right to overtime because, *inter alia*, they were not primarily engaged in the management of the enterprise in which they are/were employed or of a customarily recognized department or subdivision thereof, were not customarily and regularly directing the work of at least two other full-time employees or the equivalent, did not have authority to hire other employees, did not have the authority to fire other employees, did not customarily and regularly exercise discretion and independent judgment, and spent less than fifty percent of their time engaged in managerial work. Furthermore, Plaintiff and Class Members were not independent contractors because, *inter alia*, they did not have the freedom to choose how to

perform tasks, Defendants had authority to control how tasks were performed, and Defendants were not engaged in a distinct business from Defendants and, instead, performed the very tasks that are the core of Defendants' business.

36. Plaintiff and Class Members are and were expected to work in excess of 8 hours in a day and/or 40 hours in a week, resulting in many hours that were unpaid or were not paid at the appropriate overtime rates of pay.

37. As a uniform practice, Defendants failed to keep the records of hours worked by its employees as required by California's wage orders. However, records of the rates of pay for Plaintiff and Class Members are in the possession or within Defendants' custody and control.

38. Plaintiff and Class Members were entitled to receive one-and-one half times the hourly wage for each hour worked past 8 hours in one day, one-and-one half times the hourly wage for each hour worked past 40 hours in one week, and twice the hourly wage for each hour worked past 12 hours in one day and for all hours over 8 during his/her/their seventh consecutive day of work in one week.

39. In many instances, Plaintiff and Class Members were entitled to twice his/her/their regular rate of pay for the work performed, as Plaintiff and Class Members were often (1) working shifts that lasted more than 12 hours in length or (2) working shifts for Defendants of 8 hours or more on a seventh consecutive day of work.

40. At all relevant times, Defendants were aware of, and were under a duty to comply with the wage and overtime provisions of the California Labor Code, including, but not limited to California Labor Code sections 200 *et seq.*, 510, 1194 and 1198 and IWC wage orders. As a consequence, Defendants are subject to all applicable penalties, the exact amount to be proven at trial.

41. Defendants violated Labor Code section 204 when they failed to pay Plaintiff and Class Members minimum wage and failed to pay all wages earned for labor in excess of the normal work period no later than the pay day for the next regular payroll period. As a consequence for violating Labor Code section 204, Defendants are subject to all applicable penalties including

1 those specified pursuant to Labor Code section 210. The exact amount of the applicable penalties
2 will be proven at trial.

3 42. Labor Code section 223 provides, “Where any statute or contract requires an
4 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
5 while purporting to pay the wage designated by statute or by contract. Plaintiff and Class Members
6 routinely performed work “off-the-clock.” Thus, Defendants are liable for an additional violation
7 to the extent Defendants are in fact secretly paying less than the designated wage scale.

8 43. Labor Code section 216 provides, “In addition to any other penalty imposed by
9 this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a
10 misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable
11 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same
12 is due, with intent to secure for himself, his employer or other person, any discount upon such
13 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to
14 whom such indebtedness is due.”

15 44. During the last four years, and at all times relevant to this Complaint, Defendants
16 intentionally refused to pay overtime wages to Plaintiff and Class Members in order to receive an
17 economic benefit in violation of Labor Code section 216. As a consequence for violating Labor
18 Code section 216, Defendants are subject to all applicable civil penalties including those specified
19 pursuant to Labor Code section 225.5. The exact amount of the applicable penalties will be proven
20 at trial.

21 45. At all times relevant to this Complaint, Defendants were and are the employers of
22 Plaintiff and Class Members within the meaning of Labor Code section 558 and violated or caused
23 to be violated a provision or provisions of Part 2, Chapter 1, of the Labor Code regulating hours
24 and days of work and, as such, are liable to each Class Member for each such violation as set forth
25 in Labor Code section 558, in addition to an amount sufficient to recover underpaid wages. The
26 exact amount of the applicable penalties will be proven at trial.

27 46. Plaintiff and Class Members are entitled to interest on all due and unpaid wages
28 pursuant to Labor Code section 218.6.

47. Pursuant to Labor Code section 1194, Plaintiff and Class Members seek to recover in a civil action the unpaid balance of the full amount of the unpaid overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Lab. Code §§ 226.7, 512; IWC Wage Orders)

(On behalf of Plaintiff and all Class Members against all Defendants)

48. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

49. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code sections 226.7 and 512 and applicable sections of the IWC Wage Order.

50. California Labor Code section 226.7 provides:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

....

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

51. Moreover, California Labor Code section 512 provides:

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.

52. Section 11 of the applicable Wage Order provides:

- 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....
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes....
- c. 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.

53. Moreover, section 12 of the applicable Wage Order provides:

- 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
- 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.

54. Defendants routinely required Plaintiff and Class Members to work at least three and one-half hours without a rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

55. Defendants routinely required Plaintiff and Class Members to work more than six hours without a second rest period of at least 10 minutes and failed to compensate Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

56. Defendants routinely required Plaintiff and Class Members to work more than ten hours without a third rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

57. Defendants routinely required Plaintiff and Class Members to work more than five hours without a meal period of at least 30 minutes and failed to compensate the Plaintiff and Class

Members for said missed meal periods, as required by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders.

58. Defendants routinely required Plaintiff and Class Members to work more than ten hours without a second meal period of at least 30 minutes and failed to compensate the Plaintiff and Class Members for said missed meal periods, as required by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders.

59. By requiring Plaintiff and Class members to attend to business and failing to consistently (1) provide meal breaks within the first five hours of a work shift, (2) provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit ten-minute rest periods to Class Members, Defendants violated the California Labor Code and sections 11 and 12 of the applicable IWC Wage Order.

60. Even where Defendants' records specifically evidence that no meal and/or rest periods were provided to Plaintiff and Class Members, Defendants refuse to provide these employees with one hour of compensation for these respective violations as mandated by California law. Plaintiff is informed and believes and, on that basis, alleges that Defendants have never paid the one hour of compensation to any worker.

61. Plaintiff and Class Members are not exempt from the meal and rest period requirements of the aforementioned Employment Laws and Regulations.

62. Plaintiff and Class Members did not willfully waive, through mutual consent with Defendants, any such meal and rest periods.

63. Defendants did not pay premium payments to Plaintiff or Class Members for missed meal periods. Similarly, Defendants did not pay premium payments to Plaintiff or Class Members for missed rest periods.

64. Plaintiff and Class Members have been deprived of his/her/their rightfully earned compensation for rest periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit.

65. Plaintiff and Class Members have been deprived of his/her/their rightfully earned compensation for meal periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit.

66. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in an amount to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

FOURTH CAUSE OF ACTION
FAILURE TO PAY FINAL WAGES ON TIME

(Lab. Code §§ 201-204)

(On behalf of Plaintiff and all Class Members against all Defendants)

67. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

68. California Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge. Section 202 provides that all earned and unpaid wages of an employee who resigns are due and payable immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an employee who resigns are due within seventy-two hours of resignation.

69. At all relevant times herein, Defendants failed to implement a policy and practice to pay Plaintiff and Class Members accrued wages and other compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code. As a result, Class Members whose employment has ended have not been paid all compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code.

70. Defendant willfully failed to pay all final wages on time.

71. Defendants willfully failed to pay all final wages to involuntarily terminated employees at the time of discharge even though California Labor Code section 201 requires that employers provide immediate payment of all final wages at the time of termination.

72. Defendants willfully failed to pay all final wages on time to employees who voluntarily resigned. Defendants were made aware of each terminated employee's preference with respect to an election of whether to receive final wages by tender in person or by delivery. Those who elected to receive tender in person were present at the workplace to collect payment. Accordingly, California Labor Code section 202 has been satisfied.

73. Plaintiff and Class Members are not exempt from these requirements of the Employment Laws and Regulations.

74. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory penalties pursuant to California Labor Code section 203 and other applicable provision of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

FIFTH CAUSE OF ACTION
FAILURE TO FURNISH WAGE AND HOUR STATEMENTS

(Lab. Code §§ 226(e), 226.3)

(On behalf of Plaintiff and all Class Members against all Defendants)

75. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

76. California Labor Code section 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his/her/their employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except 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

1 dates of the period for which the employee is paid, (7) the name of the employee
2 and his/her/their social security number, except that by January 1, 2008, only the
3 last four digits of his/her/their social security number or an employee identification
4 number other than a social security number may be shown on an itemized
5 statement, (8) the name and address of the legal entity that is the employer, and (9)
6 all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee. The deductions made
8 from payment of wages shall be recorded in ink or other indelible form, properly
9 dated, showing the month, day, and year, and a copy of the statement and the record
10 of the deductions shall be kept on file by the employer for at least three years at
11 the place of employment or at a central location within the State of California.

12 77. California Labor Code section 226(e)(1) provides:

13 An employee suffering injury as a result of a knowing and intentional failure by
14 an employer to comply with subdivision (a) is entitled to recover the greater of all
15 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
16 occurs and one hundred dollars (\$100) per employee for each violation in a
17 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
18 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

19 78. California Labor Code section 226(e)(2) provides:

20 (A) An employee is deemed to suffer injury for purposes of this subdivision if the
21 employer fails to provide a wage statement.

22 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
23 employer fails to provide accurate and complete information as required by any
24 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee
25 cannot promptly and easily determine from the wage statement alone one or more
26 of the following:

27 (i) The amount of the gross wages or net wages paid to the employee during the
28 pay period or any of the other information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
(a).

(ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his/her/their social
security number or an employee identification number other than a social security
number.

79. California Labor Code section 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central location in the state . . . payroll records showing the hours worked daily by and the wages 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.

80. Defendants knowingly failed to provide Plaintiff and Class Members with timely and accurate wage and hour statements showing the inclusive dates of the pay period, gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing them, all applicable hourly rates in effect during each pay period, and the corresponding number of hours worked at each hourly rate. Plaintiff and Class Members in fact never received accurate wage statements at all, as Defendants did not employ a timekeeping system that actually tracked all hours their workers worked.

81. Plaintiff and Class Members were injured by Defendants' failure to provide accurate wage statements, because, as alleged above, Plaintiff and Class Members could not determine whether they were paid properly and/or did not receive pay for all hours worked, and thus suffered monetary damages due to Defendants' policies described above.

82. Plaintiff and Class Members are not exempt from the requirements of the Employment Laws and Regulations.

83. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California Labor Code section 226, and other applicable provisions of the Employment Laws and Regulations and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

SIXTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code §§ 17200 *et seq.*)

(On behalf of Plaintiff and all Class Members against all Defendants)

84. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

1 85. Plaintiff brings this cause of action individually and on behalf of all others
2 similarly situated.

3 86. Defendants' violations of California law, including Defendants' violations of the
4 Employment Laws and Regulations as alleged herein constitutes an unfair business practice in
5 violation of California Business and Professions Code sections 17200 *et seq* because they were
6 done repeatedly, over a significant period of time, and in a systematic manner to the detriment of
7 Plaintiff and Class Members.

8 87. In addition, Plaintiff brings this cause of action seeking equitable and statutory
9 relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the
10 amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices
11 described herein.

12 88. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or
13 fraudulent business practice, as set forth in California Business and Professions Code sections
14 17200-17208. Specifically, Defendants conducted business activities while failing to comply with
15 the legal mandates cited herein.

16 89. As a result of Defendants' unfair business practices, Defendants have reaped unfair
17 benefits at Plaintiff's and Class Members' expense.

18 90. Defendants' business practices were unfair as set forth herein, providing an
19 independent basis to support this claim.

20 91. Defendants' business practices were also fraudulent, as set forth herein, providing
21 yet another independent basis to support the claim.

22 92. Plaintiff is informed and believes and, based thereon, alleges that the fictitious
23 Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled, coerced,
24 or conspired to commit one or more of the acts alleged in this Cause of Action.

25 93. Defendants have clearly established a policy of accepting a certain amount of
26 collateral damage as incidental to its business operations, rather than accepting the alternative
27 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
28

1 responsible competitors and as set forth in legislation and the judicial record. Defendants' policy
2 is confirmed by Plaintiff's and Class Members' damages as herein alleged.

3 94. Defendants' unfair business practices entitle Plaintiff and Class Members to seek
4 preliminary and permanent injunctive relief and other restitutionary relief, including but not
5 limited to orders that Defendants account for and restore unlawfully withheld compensation to
6 the Plaintiff and Class Members and discontinue certain unlawful employment practices, conduct
7 and implement adequate training, including the implementation of policies and procedures
8 designed to prevent the legal violations at issue in this lawsuit. Defendants' unfair business
9 practices also entitle Plaintiff to attorneys' fees and costs.

10 95. As detailed above, Defendants' unlawful and unfair practices include, but are not
11 limited to, the following: not providing sick leave, not paying overtime, and not providing breaks.

12 96. Plaintiffs and Class Members lost money and/or property and suffered injury in
13 fact, including premium pay, overtime pay, penalties, interest, and other damages.

14 97. Plaintiffs and Class Members seek restitution, declaratory and injunctive relief,
15 and other relief allowable under Section 17200, *et seq.*

16
17 **SEVENTH CAUSE OF ACTION**
18 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
19 (Lab. Code §§ 2698 *et seq.*)

20 *(On behalf of Plaintiff and all Class Members against all Defendants)*

21 98. Plaintiff incorporates in this cause of action each and every allegation of the
22 preceding paragraphs, with the same force and effect as though fully set forth herein.

23 99. Plaintiff Tolentino provided written notice by certified mail to the Labor and
24 Workforce Development Agency of the specific provisions of this code alleged to have been
25 violated as required by Labor Code section 2699.3. More than sixty-five days have passed with
26 no response. As a result, Plaintiff may now commence a civil action pursuant to Labor Code
27 section 2699.

28 100. The policies, acts and practices heretofore described violate the applicable Labor
Code sections listed in Labor Code section 2699.5 and other sections of the Labor Code also

1 eligible to combine with PAGA; thus, the policies, acts and practices give rise to statutory
2 penalties as a result of such conduct. Plaintiff and Class Members, as aggrieved employees, hereby
3 seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
4 2004 on behalf of themselves and all other aggrieved employees against whom one or more of the
5 aforementioned violations of the Labor Code was committed and other applicable provisions of
6 the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys'
7 fees and costs, pursuant to statute.

8
9 **JURY DEMAND**

10 Plaintiff hereby demands a jury trial on all issues and causes of action.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for the following forms of relief, individually on behalf of all
13 others similarly situated:

14 1. Certification of this action as a class action on behalf of the classes defined herein
15 and designation of Plaintiff as representative of the classes and his/her/their counsel as counsel
16 for the classes;

17 2. For penalties, including civil penalties, pursuant to all provisions of the Labor
18 Code referenced herein which provide for penalties as a result of the conduct alleged herein;

19 3. For costs of suit incurred herein and attorneys' fees pursuant to the statutes cited
20 herein;

21 4. For compensatory damages;

22 5. For general damages in amounts according to proof and in no event in an amount
23 less than the jurisdictional limit of this court;

24 6. For special damages according to proof;

25 7. For injunctive relief;

26 8. For pre-judgment and post-judgment interest as provided by law; and

27 9. For such other and further relief as this Court deems just and proper.

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Dated: June 29, 2023

Respectfully submitted,
ILG Legal Office, P.C.



Nicolas Jupillat
Attorneys for Plaintiffs