

1 Alan Harris (SBN 146079)
David Garrett (SBN 160274)
2 HARRIS & RUBLE
655 North Central Avenue, 17th Floor
3 Glendale, California 91203
Telephone: 323.962.3777
4 Facsimile: 323.962.3004

5 Attorneys for Plaintiffs
Tiffany Ross
6 Jasmine Smith
Amani Jackson
7

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 JASMINE SMITH; TIFFANY ROSS;
and AMANI JACKSON, individually
13 and on behalf all others similarly
situated,

14 Plaintiff,

15 v.

16 BHC ALHAMBRA HOSPITAL,
17 INC.; UHS of Delaware, Inc.; and
Does 1 to 10, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No.

CLASS ACTION COMPLAINT

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wage
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Improper Wage Statements
6. Waiting Time Penalties
7. Failure to Pay Business Expenses
8. Improper Deductions from Wages
9. Unfair Competition
10. PAGA, Labor Code Section 2698
11. Failure to Maintain Records
12. Failure to Provide Records
13. Retaliation, Gov. Code §12940(h)
14. Hostile Work Environment
15. Failure to Take Steps to Prevent Discrimination

Demand for Jury Trial

1 Plaintiffs Jasmine Smith (“Smith”), Amani Jackson (“Jackson”) and Tiffany Ross
2 (“Ross”) (hereinafter, “Plaintiff(s)”), on behalf of each as an individual and all other
3 similarly situated, by and through their undersigned attorneys, alleges as follows:

4 **INTRODUCTION:**

5 1. BHC ALHAMBRA HOSPITAL, INC. (“BHC ”) owns and operates a series of
6 behavioral health centers in California, including one in Rosemead.¹

7 2. Plaintiffs are informed and believed and thereon allege that BHC has employed
8 a workforce of hundreds of therapists, nurses, medical staff, custodial staff, support staff,
9 and accounting staff and other non-exempt employees during the Class Period who perform
10 hourly, non-exempt manual duties.

11 3. BHC has company-wide policies and procedures that control virtually every
12 facet of the Class Members jobs, including the materials they use, and the jobs they
13 perform, including when and where they perform them.

14 4. Plaintiffs were employed as non-exempt employees for BHC. Each is bringing
15 this suit to recover damages against BHC due to their illegal employment practices as more
16 fully described herein.

17 5. Each Plaintiff is bringing this suit on behalf of himself/herself and a class of
18 BHC employees in California during the period four years prior to the filing of this
19 Complaint (plus the time period extended by Emergency Rule 9 of the Judicial Council of
20 California) and ending on such date as may be determined by the Court (the “Class
21 Period”).

22 6. Emergency Rule 9 as promulgated by the Judicial Council of California
23 and amended May 29, 2020, provides: “Notwithstanding any other law, the statutes of
24 limitations and repose for civil causes of action that exceed 180 days are tolled from
25 April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that:
26 “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the
27

28

¹ <https://www.bhcalhambra.com/>

1 filing of a pleading in court asserting a civil cause of action. The term “civil causes of
2 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as
3 used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed
4 “as including a special proceeding of a civil nature”) The rule also applies to
5 statutes of limitations on filing of causes of action in court found in codes other than
6 the Code of Civil Procedure.”

7 **JURISDICTION AND VENUE**

8 7. This is a civil action seeking unpaid wages, continuing wages, damages, and
9 attorneys’ fees and costs, including such reasonable reimbursement of fees and costs as
10 may be required by Section 218.5 of the California Labor Code. BHC has a policy,
11 practice and history of labor law violations including not providing meal and rest breaks
12 to its employees. Neither, does BHC pay proper meal premiums to its employees. Class
13 Members are forced to work off the clock. Employees do not receive rest break penalties
14 as required. The wage statements do not contain the legally required information.
15 Employees are not paid the proper local and state minimum wage.

16 8. Venue as Defendants is proper in this judicial district, pursuant to California
17 Code of Civil Procedure section 395. Defendants maintain an office, transact business,
18 have an agent or are otherwise found in the County of Los Angeles and are within the
19 jurisdiction of this court for the purpose of service of process. The unlawful acts alleged
20 herein had a direct effect on and were committed within the State of California.

21 9. This Court has jurisdiction over Defendants because, upon information and
22 belief, each Defendant is either a resident of California, has minimum contacts in
23 California, or otherwise intentionally avails itself of the protections of California so as to
24 render California’s exercise of jurisdiction over Defendants consistent with traditional
25 notions of fair play and substantial justice.

26 **PARTIES**

27 10. Each of Plaintiff is an individual. At all times relevant hereto, each Plaintiff
28

1 worked in Los Angeles County. Each Plaintiff was employed by BHC and/or UHS during
2 the Class Period. Plaintiffs have complied with all required administrative requirements
3 prior to the filing of this case, including the filing of a PAGA letter and timely application
4 for Right to Sue letters.

5 11. Plaintiff and informed and believes, and thereon alleges that each of
6 Defendant BHC and UHS is a Delaware corporation and at all times relevant hereto, BHC
7 conducted substantial and regular business in Los Angeles County, California. BHC's
8 business is owning and operating treatment facilities throughout California and the United
9 States.

10 12. Plaintiff and informed and believes, and thereon alleges that each of the
11 individual Doe Defendants is an individual who is a California resident who work(ed) at
12 BHC. Each of individual Doe Defendant was an "other person acting on behalf of an
13 employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission." Cal. Lab. Code § 558.

16 13. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown
18 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil
19 Procedure § 474. Each Plaintiff is informed and believe, and based thereon allege, that
20 each of the Defendants designated herein as a DOE is legally responsible in some manner
21 for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this
22 Complaint to reflect the true names and capacities of the Defendants designated
23 hereinafter as DOES when such identities become known.

24 14. Each Plaintiff is informed and believe, and based thereon allege, that each
25 Defendant acted in all respects pertinent to this action as the agent of the other
26 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
27 hereto, and the acts of each Defendant are legally attributable to the other Defendants.
28

1 The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on
2 behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or
3 more provisions of the California Labor Code as alleged herein.

4 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

5 15. Each Plaintiff was a non-exempt employee within the meaning of the
6 California Labor Code and the implementing rules and regulations of the IWC Wage
7 Orders, and, in particular, Industrial Welfare Commission Wage Order 5-2001 and
8 California Labor Code §515. Employee's primary job duties – including the tasks
9 described in the preceding paragraph – involved tasks that were performed pursuant to an
10 established protocol. The job duties involved a variety of physical and clerical demands,
11 interacting with patients and or other staff. This type of work is non-exempt work.

12 16. In order to meet the requirements of their job duties, employees typically
13 work more than 40 hours per week and more than eight hours per day, and sometimes
14 have to work seven days per week at the direction of BHC . Employees are also not
15 provided meal and rest periods as required by the California Labor Code. Employees are
16 not paid the proper minimum wage. For example, during the Class Period, BHC
17 consistently paid Class Members less than the local minimum wage.

18 17. Contrary to federal and California law, including the provisions of Section
19 510 of the California Labor Code, BHC does not keep proper time records and does not
20 pay proper overtime.

21 18. Plaintiffs are informed and believed and thereon allege that BHC
22 implemented a system to pay its employees an hourly rate plus bonuses. However, BHC
23 often failed to properly pay bonuses and BHC failed to utilize the bonuses to paid to
24 employees in order to compute overtime. Defendant paid commissions as bonuses i.e.
25 “money promised to an employee in addition to the monthly salary, hourly wage,
26 commission or piece rate usually due as compensation”. Division of Labor Standards
27 Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Bonuses are in
28

1 addition to any other remuneration rate and may be predicated on performance over and
2 above that which is paid for hours worked, pieces made, or sales completed. Id. A bonus
3 may be in the form of a gratuity where there is no promise for their payment, for example, a
4 holiday bonus at the end of the year. Additionally, a bonus may be a contractually required
5 payment where a promise is made that a bonus will be paid in return for a specific result,
6 such as exceeding a minimum sales figure or piece quota, or as an inducement to remain in
7 the employ of the employer for a certain period of time.² Defendant failed to utilize the
8 commissions in computation of overtime for Aggrieved Employees. Further, Defendant
9 failed to pay the hourly wages due when commission payments exceeded the hourly wages.

10 19. When Plaintiffs became aware of the unpaid wages and questioned
11 representatives of BHC regarding the wages that were withheld, BHC refused to pay the
12 outstanding wages.

13 20. Plaintiffs were discriminated against by BHC and its managers in violation of
14 the Fair Employment and Housing Act (“FEHA”), Gov. Code §12940 et seq., by creating
15 a hostile work environment, retaliating against Plaintiffs and discriminating against
16 Plaintiffs. When Class Members complain about the discrimination and harassment, their
17 complaints are ignored, and they suffer retaliation.

18 21. In performing their job duties, BHC required employees to use clothing,
19 safety equipment and other tools. Employees had to purchase and maintain their safety
20 equipment and tools with their own money, and they were not reimbursed by BHC.

21 22. BHC has not provided proper expense reimbursement such as equipment and
22 cell phone reimbursement.

23 23. BHC failed to comply with the California Labor Code and Wage Order 5-
24

25 ² The word has been defined as: “An addition to salary or wages normally paid for extraordinary
26 work. An inducement to employees to procure efficient and faithful service.” Duffy Bros. v. Bing &
27 Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where
28 there is no promise for their payment; or they may be a contractually required payment where a promise
is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece
quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards
Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses
are wages under the definition found in California Labor Code §200.

1 2001 (6) by failing to maintain time records showing when Plaintiffs began and ended
2 each work and meal break period, and total daily hours worked. Defendants also failed to
3 provide Plaintiffs with itemized wage statements that reflect all deductions from payment
4 of wages.

5 24. At all relevant times mentioned herein, section 201 of the California Labor
6 Code provided that “wages earned and unpaid at the time of discharge are due and payable
7 immediately.” Cal. Lab. Code § 201. Similarly, section 202 of the California Labor Code
8 provided:

9 If an employee not having a written contract for a definite period quits his or
10 him employment, his or him wages shall become due and payable not later
11 than 72 hours thereafter, unless the employee has given 72 hours previous
12 notice of his or him intention to quit, in which case the employee is entitled
to his or him wages at the time of quitting.

13 Id. § 202(a).

14 25. Defendants did not compensate Plaintiff and the Class Members as required
15 by sections 201 and/or 202 of the California Labor Code, as the “final” paycheck
16 Plaintiffs received did not fully compensate Plaintiffs, as Defendants failed to pay
17 overtime to Plaintiffs for hours worked in excess of eight per day.

18 26. Furthermore, at all relevant times mentioned herein, section 203 of the
19 California Labor Code provided:

20 If an employer willfully fails to pay, without abatement or reduction, in
21 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
22 employee who is discharged or who quits, the wages of the employee shall
23 continue as a penalty from the due date thereof at the same rate until paid or
until action therefor is commenced; but the wages shall not continue for more
than 30 days.

24 Id. § 203.

25 27. Plaintiffs contend that Defendants failure to pay him and the Class Members
26 within the time provided by sections 201 and/or 202 of the California Labor Code has
27 been and is “willful” within the meaning of section 203 of the California Labor Code and
28 that, accordingly, Plaintiffs are entitled to the “continuing wages” provided for by section

1 203.

2 28. Defendants also violated section 204 of the California Labor Code by failing to
3 regularly pay all wages earned to those of its workers who had not quit or been fired.

4 29. At all relevant times mentioned herein, section 1198 of the California Labor
5 Code provided:

6 The maximum hours of work and the standard conditions of labor fixed by
7 the [Industrial Welfare Commission] shall be the maximum hours of work
8 and the standard conditions of labor for employees. The employment of any
9 employee for longer hours than those fixed by [an] order or under conditions
10 of labor prohibited by [an] order is unlawful.
11

12 Cal. Lab. Code § 1198.

13 30. At all relevant times mentioned herein, Wage Order Number 16 (as
14 periodically amended) applied to Plaintiff and the Class Members.

15 31. Wage Order Number 2 requires a one-hour wage premium for each day that
16 an employee is not provided with a mandated ten-minute rest period per four-hour work
17 period. Additionally, Wage Order Number 2 requires a one-hour wage premium for each
18 day that an employee is not provided with a mandated thirty-minute meal period for any
19 shift that is longer than five hours. Finally, Wage Order Number 16 requires that those
20 who are employed more than eight hours in any workday or more than forty hours in any
21 workweek receive overtime compensation.

22 32. The right to rest periods and meal periods has been codified in sections 226.7
23 and 512 of the California Labor Code. At all relevant times mentioned herein, section 512
24 provided:

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

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

6 Cal. Lab. Code § 512(a).

7 33. At all relevant times mentioned herein, section 226.7 provided:

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

12 Cal. Lab. Code § 226.7(b).

13 34. During their employment with Defendants, Plaintiff and the Class Members
14 were not provided ten-minute rest breaks and thirty-minute meal breaks. Neither Plaintiff
15 nor the Class Members were provided the required rest and meal breaks.

16 35. Compensation for missed rest and meal breaks constitutes wages within the
17 meaning of section 201 of the California Labor Code.

18 36. At all relevant times herein, section 226 of the Labor Code provided:

19 (a) Every employer shall, semimonthly or at the time of each payment of
20 wages, furnish each of his or her employees, either as a detachable part of
21 the check, draft, or voucher paying the employee's wages, or separately when
22 wages are paid by personal check or cash, an itemized statement in writing
23 showing (1) gross wages earned, (2) total hours worked by the employee,
24 except for any employee whose compensation is solely based on a salary and
25 who is exempt from payment of overtime under subdivision (a) of Section
26 515 or any applicable order of the Industrial Welfare Commission, (3) the
27 number of piece-rate units earned and any applicable piece rate if the
28 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

1 employer, and (9) all applicable hourly rates in effect during the pay period
2 and the corresponding number of hours worked at each hourly rate by the
3 employee. The deductions made from payments of wages shall be recorded
4 in ink or other indelible form, properly dated, showing the month, day, and
5 year, and a copy of the statement or a record of the deductions shall be kept
6 on file by the employer for at least three years at the place of employment or
7 at a central location within the State of California.

8

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

16

17 (h) An employee may also bring an action for injunctive relief to ensure
18 compliance with this section, and is entitled to an award of costs and
19 reasonable attorney's fees.

20 Id. § 226.

21 37. Defendants employed Plaintiff and the Class Members but failed to provide
22 them with the data required by section 226 of the California Labor Code.

23 38. At all relevant times mentioned herein, section 204(a) of the California Labor
24 Code provided:

25 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
26 earned by any person in any employment are due and payable twice during
27 each calendar month, on days designated in advance by the employer as the
28 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.

29 Id. § 204(a).

30 39. At all relevant times mentioned herein, section 510 of the California Labor
31 Code provided:

32 Eight hours of labor constitutes a day's work. Any work in excess of eight
33 hours in one workday and any work in excess of 40 hours in any one
34 workweek and the first eight hours worked on the seventh day of work in any

one workweek shall be compensated at the rate of at least 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following: (1) An alternative workweek schedule adopted pursuant to Section 511. (2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

Id. § 510(a).

40. In regard to the employment of Plaintiff and the Class, the provisions of subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable in that no alternative workweek schedule had been adopted pursuant to section 511 and Plaintiff's employment was not governed by any collective bargaining agreement. Similarly members of the Class were not members of any union nor was their work for BHC governed by any collective bargaining agreement.

41. At all relevant times mentioned herein, section 1194 of the California Labor Code provided:

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 . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Id. § 1194. At all relevant times mentioned herein, section 1194.2 of the California Labor Code provided that, "[I]n any action under . . . Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Id. § 1194.2.

Section 1197.1 (a) of the California Labor Code provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

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

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Cal. Lab. Code § 1197.1.

42. IWC Wage Order 2, provides, in part:

2. DEFINITIONS

(D) —"Employ" means to engage, suffer, or permit to work.

(E) —"Employee" means any person employed by an employer.

(F) —"Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

...

3. HOURS AND DAYS OF WORK

(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 1/2) 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 as follows:

(a) Employees may be employed up to a maximum of 16 hours including meal periods in any one day from the time they are required and do report until dismissed, provided the employee is compensated for such overtime at not less than:

(i) For daily employees and weekly employees, excluding weekly employees guaranteed more than 40 hours a workweek and —on call employees, one

1 and one-half (1 1/2) times the employee's regular rate of pay for all hours
2 worked in excess of eight (8) hours up to and including 12 hours in any one
3 workday, and for the first eight (8) hours worked on the seventh (7th)
consecutive day of work in a workweek; and

4 (ii) Double the employee's regular rate of pay for all hours worked in excess
5 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.

6 . . .

7 (iv) The overtime rate of compensation required to be paid to a nonexempt
8 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.

9 . . .

10 **4. MINIMUM WAGES**

11 (A) Every employer shall pay to each employee wages not less than nine
dollars (\$13.00) per hour for all hours worked, effective January 1, 2021. . . .

12 **7. RECORDS**

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

14 (1) Full name, home address, occupation and social security number.

15 (2) Birth date, if under 18 years, and designation as a minor.

16 (3) Time records showing when the employee begins and ends each work
17 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.

18 (4) Total wages paid each payroll period, including value of board, lodging,
19 or other compensation actually furnished to the employee.

20 (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
21 request.

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

24 (B) Every employer shall semimonthly or at the time of each payment of
wages furnish each employee, either as a detachable part of the check, draft,
25 or voucher paying the employee's wages, or separately, an itemized
statement in writing showing: (1) all deductions; (2) the inclusive dates of the
26 period for which the employee is paid; (3) the name of the employee or the
employee's social security number; and (4) the name of the employer,
27 provided all deductions made on written orders of the employee may be
28 aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

...

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than 30 minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period.

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

(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 work day that the meal period is not provided.

(D) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. 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 1/2) 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 work day that the rest period is not provided.

...

20. PENALTIES

(See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

IWC Wage Order 2.

43. At all relevant times mentioned herein, section 558 of the California Labor Code provided:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 558.

44. At all relevant times herein, California Labor Code section 2802 provided, in relevant part:

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or duties

(b) All awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing rights granted by this section.

1 Cal. Lab. Code § 2802.

2 45. At all relevant times herein, California Labor Code section 221 provided:

3 It shall be unlawful for any employer to collect or receive from an employee
4 any part of wages theretofore paid by said employer to said employee.

5 Cal. Lab. Code § 221. “[Labor Code] section 221 has long been held to prohibit
6 deductions from an employee’s wages for cash shortages, breakage, loss of equipment,
7 and other business losses that may result from the employee’s simple negligence.”
8 Hudgins v. Neiman Marcus Group, Inc., 34 Cal.App.4th 1109, 1118 (1995). An employer
9 can lawfully withhold amounts from an employee’s wages only: (1) when required or
10 empowered to do so by state or federal law, or (2) when a deduction is expressly
11 authorized in writing by the employee to cover insurance premiums, benefit plan
12 contributions or other deductions not amounting to a rebate on the employee’s wages, or
13 (3) when a deduction to cover health, welfare, or pension contributions is expressly
14 authorized by a wage or collective bargaining agreement. Labor Code Sections 221 and
15 224.

16 46. Notwithstanding the foregoing requirements of law, Plaintiff and the Class
17 Members were not timely paid the minimum wages and/or overtime to which they were
18 entitled. Plaintiffs and the Class Members were denied reimbursement, meal breaks, rest
19 breaks and payment of overtime wages although they often worked in excess of eight
20 hours per day and forty hours per week.

21 47. At all relevant times mentioned herein, section 226.8 of the Code provided in
22 pertinent part:

23 (a) It is unlawful for any person or employer to engage in any of the
24 following activities:

25 (1) Willful misclassification of an individual as an independent
26 contractor.

27 (2) Charging an individual who has been willfully misclassified as an
28 independent contractor a fee, or making any deductions from compensation,

1 for any purpose, including for goods, materials, space rental, services,
2 government licenses, repairs, equipment maintenance, or fines arising from
3 the individual's employment where any of the acts described in this paragraph
4 would have violated the law if the individual had not been misclassified.

5 (b) If the Labor and Workforce Development Agency or a court issues
6 a determination that a person or employer has engaged in any of the
7 enumerated violations of subdivision (a), the person or employer shall be
8 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
9 not more than fifteen thousand dollars (\$15,000) for each violation, in
10 addition to any other penalties or fines permitted by law.

11 (c) If the Labor and Workforce Development Agency or a court issues
12 a determination that a person or employer has engaged in any of the
13 enumerated violations of subdivision (a) and the person or employer has
14 engaged in or is engaging in a pattern or practice of these violations, the
15 person or employer shall be subject to a civil penalty of not less than ten
16 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
17 (\$25,000) for each violation, in addition to any other penalties or fines
18 permitted by law.

19 Code § 226.8. Defendants violated Code § 226.8 by willfully misclassifying many of its
20 employees, past and present, including Plaintiffs and Aggrieved Employees, as
21 independent contractors.

22 48. Defendants have engaged in a pattern and practice of misclassifying their
23 employees as independent contractors to avoid taxes, insurance and other costs that
24 accompany employee status. Section 2753 of the Code provides:

25 (a) A person who, for money or other valuable consideration, knowingly
26 advises an employer to treat an individual as an independent contractor to
27 avoid employee status for that individual shall be jointly and severally
28

1 liable with the employer if the individual is found not to be an
2 independent contractor.

3 Code § 2753.

4 49. All of the foregoing was intentional misconduct of Defendants that injured
5 Plaintiff and putative Class Members insofar as they were subjected to confusion and
6 deprived of information to which they were legally entitled.

7 **CLASS ACTION ALLEGATIONS**

8 50. Each Plaintiff brings this action on behalf of himself and all others similarly
9 situated pursuant to Code of Civil Procedure section 382. Each Plaintiff seeks to represent
10 a Class which is defined as: all non-exempt BHC employees who provided services in
11 California during the period four years prior to the filing of this Complaint and ending on
12 such date as may be determined by the Court (the “Class Period”).

13 51. The Class includes all persons who performed work for BHC during the Class
14 Period, even if they were paid by commission, salary, piece rate, or any combination
15 thereof.

16 52. Each Plaintiff reserves the right under Rule 3.765 of the California Rules of
17 Court to amend or modify the class descriptions with greater specificity or to further divide
18 the class into subclasses.

19 53. This action is properly brought as a class action pursuant to Code of Civil
20 Procedure 382 because there is a well-defined community of interest in the litigation and
21 the proposed Class is easily ascertainable.

22 54. Numerosity: The potential members of the Class are so numerous that joinder
23 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
24 relevant time periods BHC employed more than 100 employees. Nevertheless the Class
25 does not consist of so many individuals as to make this case unmanageable.

26 55. Commonality: There are questions of law and fact common to the Class that
27 predominate over any questions affecting only individual Class members. Common
28

1 questions include, but at not limited to: (a) whether BHC provided proper wage statements
2 to its workers; (b) whether BHC failed to pay Class members proper overtime
3 compensation; (c) whether BHC failed to provide meal and rest periods (d) whether BHC
4 reimbursed class members for expenses and mileage; (e) whether BHC provided accurate
5 itemized wage statements; and (f) whether BHC and/or BHC and/or other BHC
6 Contractors acted intentionally when classifying the “installment managers” as independent
7 contractors. Moreover, there are very few questions of law or fact that are not common to
8 the class.

9 56. Typicality: The claims of each Plaintiff are typical of the claims of the Class.

10 57. Adequacy of representation: Each Plaintiff will fairly and adequately represent
11 and protect the interests of the members of the Class . Counsel for Plaintiff are competent
12 and experienced in litigating employment class action cases.

13 58. Superiority of Class Action: A class action is superior to other available means
14 for the fair and efficient adjudication of this controversy. The unlawful conduct described in
15 this complaint are based on BHC ’s company-wide policies regarding its treatment of
16 employees. Moreover, class action treatment will allow people similarly situated as Plaintiff
17 to litigate their claims in the manner that is most efficient and economical for all parties and
18 for the judicial system.

19 **FIRST CAUSE OF ACTION**

20 (Failure To Pay Overtime California Labor Code §§ 510 and 1194; Wage Order 2)

21 (By Plaintiffs individually and on behalf of the Class against all Defendants)

22 59. Each Plaintiff realleges and incorporates herein by reference the allegations
23 contained in this Complaint as though fully set forth herein.

24 60. Defendants failed to pay each Plaintiff and the members of the Class for all
25 hours worked. Plaintiff and the members of the Class worked more than 40 hours per week
26 and/or more than 8 hours per day, but they did not receive compensation for this time at
27 their regularly hourly rate or did they receive overtime compensation.
28

1 61. As a result of BHC 's failure to pay overtime, BHC willfully violated the
2 provisions of Labor Code §§ 510 and 1194.

3 62. Each Plaintiff and the Class members have been deprived of wages in an
4 amount to be determined at trial, and are entitled to recovery of such amounts, plus interest
5 and penalties.

6 **SECOND CAUSE OF ACTION**

7 (Failure To Pay Minimum Wage)

8 (By Plaintiffs individually and on behalf of the Class against all Defendants)

9 63. Each Plaintiff realleges and incorporates herein by reference the allegations
10 contained in this Complaint as though fully set forth herein.

11 64. Under both state and federal law, employees may not agree to waive their
12 entitlement to the minimum wage. Moreover, contrary to the federal averaging method,
13 California workers must receive the minimum wage for each hour worked during the
14 payroll period.

15 65. Each Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
16 members of the Class were not compensated in an amount greater than or equal to the
17 minimum wage while employed as employees by defendant.

18 66. As a proximate result of the aforementioned violations, each Plaintiff has been
19 damaged in an amount according to proof at time of trial.

20 **THIRD CAUSE OF ACTION**

21 (Failure To Provide Meal Periods Labor Code §226.7)

22 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

23 67. Each Plaintiff realleges and incorporates herein by reference the allegations
24 contained in this Complaint as though fully set forth herein.

25 68. Labor Code section 226.7 requires an employer to pay an additional hour of
26 compensation for each meal period the employer fails to provide a compliant meal period.
27 Employees are entitled to meal period of at least thirty 30 minutes per five hour work
28

1 period.

2 69. Plaintiffs and the Class members consistently worked more than 5 hour shifts,
3 but Plaintiffs and the Class members were not provided with additional compensation for
4 meal periods which were missed, truncated or tardy due to the failure of one or more of the
5 Defendants to provide a compliant meal period. Plaintiffs and the Class members
6 consistently worked more than 10 hour shifts, but Plaintiffs and the Class members were
7 not provided with additional compensation for second meal periods which were missed,
8 truncated or tardy due to the failure of one or more of the Defendants to provide a compliant
9 meal period.

10 70. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are
11 entitled to damages in an amount equal to one hour of wages per missed meal break, in an
12 amount to be proven at trial.

13 **FOURTH CAUSE OF ACTION**

14 (Failure To Provide Proper Rest Periods Labor Code §226.7)

15 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

16 71. Each Plaintiff realleges and incorporates herein by reference the allegations
17 contained in this Complaint as though fully set forth herein.

18 72. Labor Code Section 226.7 requires an employer to pay an additional hour of
19 compensation for each rest period the employer fails to provide a compliant rest period.
20 Employees are entitled to a rest period of ten minutes for every four hours worked or major
21 fraction thereof.

22 73. Each Plaintiff and the Class members consistently worked over four hour
23 shifts, but defendant failed to provide them with the requisite ten minute rest period.
24 Pursuant to Labor Code section 226.7, Plaintiff and the Class members are entitled to
25 damages in an amount equal to one hour of wages per missed rest period, in an amount to
26 be proven at trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION

(Failure To Provide Itemized Wage Statements Labor Code § 226)

(By Plaintiffs individually and on behalf of the Class and against all Defendants)

74. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

75. Defendants knowingly and intentionally failed to comply with Labor Code section 226(a), which requires Defendants to provide the name of the legal entity which is the employer, itemize in wage statements all deductions from payment of wages and accurately report total hours worked by each Plaintiff and members of the Class.

76. Wage Order 5-2001 (7) requires Defendants to maintain time records showing, among other things, when the employee begins and ends each work period and total daily hours worked in an itemized wage statement. Time records must also show all deductions from payment of wages and accurately report total hours worked by Plaintiff and members of the Class, as well as the legal entity which is the employer. Further, under Naranjo, there are derivative violations for failure to pay meal penalties.

77. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 dollars.

SIXTH CAUSE OF ACTION

(Waiting Time Penalties Labor Code § 203)

(By Plaintiffs individually and on behalf of the Class and against all Defendants)

78. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

79. Defendants' failure to pay wages, as alleged above, was willful in that BHC knew wages were due but failed to pay them. This entitles Plaintiff and members of the

1 Class who are no longer working as employees to penalties under Labor Code § 203, which
2 provides that an employee's wages shall continue as penalty until paid for a period of up to
3 30 days from the time they were due. Under the Naranjo decision, each Plaintiff is also
4 entitled to continuing wages for missed meal and rest breaks.

5 80. Defendants failed to pay each Plaintiff and relevant members of the Class a
6 sum certain at the time of termination or within 72 hours of their resignation, and have
7 failed to pay those sums for 30 days thereafter. Pursuant to Labor Code section 203,
8 Plaintiff and relevant members of the Class are entitled to a penalty in the amount of their
9 respective daily wage multiplied by 30 days.

10 **SEVENTH CAUSE OF ACTION**

11 (Failure To Provide Indemnification of Business Expenses Labor Code §2802)

12 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

13 81. Each Plaintiff realleges and incorporates herein by reference the allegations
14 contained in this Complaint as though fully set forth herein.

15 82. Labor Code section 2802 requires Defendants to reimburse each Plaintiff and
16 members of the Class for the expenses incurred by them in the performance of their job
17 duties, including but not limited to, expenses incurred by the use of their vehicles,
18 insurance, rental fees, mileage, cell phone usage, uniforms, equipment purchases, and
19 telephone usage resulting from the performance of their job duties.

20 83. Defendants violated Labor Code section 2802 because it required each
21 Plaintiff and members of the Class to incur and pay for such expenses in the discharge of
22 their employment duties and without reimbursement.

23 84. As a proximate result, Plaintiff and members of the Class have been
24 damaged in an amount according to proof at trial.

25 **EIGHTH CAUSE OF ACTION**

26 (Improper Deductions From Wages, Labor Code § 221)

27 (By Plaintiffs individually and on behalf of the Class and against all Defendants)
28

1 85. Each Plaintiff realleges and incorporates herein by reference the allegations
2 contained in this Complaint as though fully set forth herein.

3 86. Labor Code section 221 prohibits Defendants from deducting from employee
4 wages paid toward employee compensation.

5 87. Each Plaintiff is informed and believed, and on that basis alleges, that
6 Defendants improperly deducted portions of Plaintiff's wages and the wages of members
7 of the Class, in violation of Labor Code section 221.

8 88. As a proximate result, Plaintiff and members of the Class have been
9 damaged in an amount according to proof at trial.

10 **NINTH CAUSE OF ACTION**

11 (Unfair Competition Business and Professions Code Section 17200)

12 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

13 89. Each Plaintiff realleges and incorporates herein by reference the allegations
14 contained in this Complaint as though fully set forth herein.

15 90. The conduct of Defendants as alleged in this Complaint has been, and
16 continues to be, unfair, unlawful, deceptive, and harmful to Plaintiffs, the Class , and the
17 public in general. Plaintiff seeks to enforce important rights affecting the public interest
18 within the meaning of code of Civil Procedure section 1021.5.

19 91. Each Plaintiff is a "person" within the meaning of Business & Professions
20 Code section 17204, and, therefore, has standing to bring this cause of action for
21 injunctive relief, restitution, and other appropriate equitable relief.

22 92. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
23 business practices.

24 93. California's wage and hours laws, including the laws described in this
25 Complaint, reflect public policies that are fundamental in the State of California. The
26 FLSA reflects a public policy that is fundamental in the United States. These public
27 policies include the importance of providing employees with proper compensation, meal
28

1 periods, and rest periods.

2 94. Through the conduct alleged in this Complaint, Defendants have acted
3 contrary to these public policies, have violated the California Labor Code, and have
4 engaged in other unlawful, unfair, and deceptive business practices in violation of
5 California's Business & Professions Code. As a result, Plaintiff, and all persons similarly
6 situated (including the Class members alleged in this Complaint) have been deprived of
7 rights, benefits, and privileges guaranteed to employees by law.

8 95. Defendants, by engaging in the conduct described in this Complaint, either
9 knew or should have known that its conduct was unlawful.

10 96. As a proximate result of Defendants' conduct, Plaintiff and Class members
11 alleged herein have been damaged in a sum to be proven at trial.

12 97. This Court should therefore make such orders and/or judgments as may be
13 necessary to require Defendants to pay to Plaintiff and the members of the Class the
14 money Defendants have heretofore unlawfully failed to pay them.

15 **TENTH CAUSE OF ACTION**

16 (California Labor Code - Private Attorneys General Act)

17 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

18 98. Each Plaintiff realleges and incorporates herein by reference the allegations
19 contained in this Complaint as though fully set forth herein.

20 99. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately
21 November 7, 2024, Plaintiffs gave written notice by certified mail to the California Labor
22 and Workforce Development Agency ("LWDA") of the specific provisions of the Labor
23 Code alleged to have been violated by BHC, including the theories set forth in the
24 Complaint. Also on that day, Plaintiffs gave written notice by certified mail to BHC of
25 the specific provisions of the Labor Code alleged to have been violated by them.

26 100. After the appropriate passage of time, Plaintiffs "may as a matter of right
27 amend [the] existing [C]omplaint to add a cause of action arising under [the Labor Code
28

1 Private Attorney General Act (“LCPAGA”)].” Cal. Lab. Code § 2699.3(a)(2)(C). The
2 LCPAGA establishes civil penalties for violations of the Labor Code, including the
3 violations alleged in this Complaint.

4 101. Each Plaintiff contends that section 2698 et seq. of the Labor Code enables
5 him to recover civil penalties under the LCPAGA, as well as attorney’s fees and costs,
6 from BHC and BHC through a civil action on behalf himself and other aggrieved
7 employees.

8 102. Each Plaintiff will seek to recover the PAGA penalties through a
9 representative action permitted by PAGA and the California Supreme Court in *Arias v.*
10 Superior Court, 46 Cal. 4th 969 (2009). Plaintiff will seek civil penalties pursuant to
11 PAGA for violations of the following Labor Code provisions:

- 12 a. failure to pay overtime wages to Employees in violation of Wage Order No.
13 16 and Labor Code §§510, 558, 1194 and 1198;
- 14 b. failure to pay minimum wages to Employees in violation of Wage Order No.
15 16 and Labor Code §§1182.12, 1194, and 1197;
- 16 c. failure to provide meal and rest periods to Employees in violation of Wage
17 Order No. 16 and Labor Code §§ 226.7, 512, and 558;
- 18 d. failure to provide itemized wage statements to Employees in violation of
19 Labor Code §§ 226(a), 1174, and 1174.5;
- 20 e. failure to provide prompt payment of wages upon termination and/or
21 resignation of Employees in violation of Labor Code §§ 201, 202, 203;
- 22 f. failure to reimburse Employees for all reasonably necessary expenditures
23 and losses incurred by Employees in direct consequence of the discharge of their
24 duties, including but not limited costs of their vehicles, insurance, rental fees,
25 mileage, cell phone usage, unions, equipment purchases, and telephone usage in
26 violation of Labor Code § 2802;
- 27 g. improper deductions from wages in violation of Labor Code §§ 221 and
28 225.5.
- h. willful misclassification of Employees as Independent Contractors in
violation of Labor Code §226.8;
- i. failure to keep required payroll records in violation of Wage Order No. 16

1 and Labor Code §§ 1174 and 1174.5.

2 j. failure to promptly pay owed wages in violation of Labor Code §§ 201.3,
3 204.

4 k. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558
5 imposes a civil penalty in addition to any other penalty provided by law of fifty
6 dollars (\$50) for initial violations for each underpaid employee for each pay period
7 for which the employee was underpaid in addition to an amount sufficient to
8 recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
9 each underpaid employee for each pay period for which the employee was
10 underpaid in addition to an amount sufficient to recover underpaid wages.
11 Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
12 Aggrieved Employees pursuant to Labor Code § 558(a)(3).

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

18 m. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a
19 civil penalty of \$100, and for subsequent violations \$200.

20 n. With respect to violations of Labor Code § 1174, Labor Code § 1174.5
21 imposes a civil penalty of \$500.

22 o. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars
23 (\$100) per pay period, per aggrieved employee for initial violations, and two
24 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent
25 violations for all Labor Code provisions for which a civil penalty is not specifically
26 provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202,
27 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

28 **ELEVENTH CAUSE OF ACTION**

(Failure to maintain Accurate Payroll Time Records,
Labor Code section 1174, IWC Wage Order No. 16)

(On Behalf of Plaintiffs and the Class Against Defendant)

103. Each Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

104. Defendant BHC has violated California Labor Code section 1174 and IWC Wage Order No. 16 by willfully failing to keep required payroll records showing the actual hours and/or the begin and end time worked each day by Plaintiff. Indeed, the IWC Wage Order requires that the employer maintain “[t]ime records showing when the employee begins and ends each work period.” 8 Cal. Code Regs. § 11160(6)(A)(1). Defendant BHC failed to properly maintain such records.

105. As a direct and proximate result of Defendant’s failure to maintain payroll records, Plaintiff suffered actual economic harm as he has been precluded from accurately monitoring the number of hours worked and thus seeking all accrued pay.

106. Plaintiffs also request relief as described below.

TWELFTH CAUSE OF ACTION

(Cal. Lab. Code §§ 226 & 1198.5—Failure to Provide Employment Records Upon Request)

(On Behalf of Plaintiffs Only Against Defendant BHC)

107. Each Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in this Complaint.

108. Pursuant to Labor Code section 226(b), an employer shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer.

109. Each Plaintiff has requested that Defendant BHC permit inspection or copying of each Plaintiff’s employment records pursuant to Labor Code section 226(b). Defendant BHC has failed to provide each Plaintiff with all of his employment records within 21 days of her request.

110. Pursuant to Labor Code section 1198.5 “has the right to inspect and receive a

1 copy of the personnel records that the employer maintains relating to the employee's
2 performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5.

3 111. Each Plaintiff requested that Defendant BHC permit inspection or copying of
4 his employment records pursuant to Labor Code section 1198.5. Defendant BHC has
5 failed to provide Plaintiff with an opportunity to inspect or copy all of his employment
6 records within 30 days of her request.

7 112. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby
8 seeks to recover from Defendant BHC a seven-hundred-fifty dollar (\$750) penalty,
9 reasonable attorney's fees, and the cost of bringing this cause of action.

10 113. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and
11 hereby seeks to recover from Defendant BHC a seven-hundred-fifty dollar (\$750) penalty,
12 reasonable attorneys' fees, and the cost of bringing this cause of action.

13 **THIRTEENTH CAUSE OF ACTION**

14 (Retaliation for Opposing Discrimination and Harassment, Cal. Gov. Code § 12940(h))

15 (On Behalf of Plaintiffs Ross, Smith and Jackson Against All Defendants)

16 114. Plaintiff repleads, realleges, and incorporates by reference each and every
17 allegation set forth in the Complaint.

18 115. At all relevant times herein and in violation of California Government Code
19 section 12940(h), each Doe Defendant harassed, discriminated and retaliated against each
20 Plaintiff by adversely affecting each Plaintiff's employment after she complained about
21 and/or opposed unlawful labor practices such as failure to pay commissions and wages in
22 a timely manner and harassment.

23 116. Each Plaintiff repeatedly opposed, rejected, did not welcome, and complained
24 about harassment and discrimination.

25 117. The conduct of Defendants and/or its agents/employees as described herein
26 was malicious, fraudulent, and/or oppressive, and done with a willful and conscious
27 disregard for each Plaintiff's rights and for the deleterious consequences of Defendant's
28

1 actions. Defendant and its agents/employees or supervisors, authorized, condoned and
2 ratified the unlawful conduct of each other. Consequently, each Plaintiff is entitled to
3 punitive damages against Defendant.

4 118. Plaintiffs Ross, Smith and Jackson filed a complaint with the Department of
5 Fair Employment and Housing (“DFEH”). Plaintiff has received the requisite right-to-
6 sue letter issued by the DFEH regarding the claims involving harassment and
7 discrimination herein. Therefore, each Plaintiff filed this action within one year of the
8 date of the “right to sue” letter received from the DFEH and therefore has properly
9 exhausted her administrative remedies.

10 **FOURTEENTH CAUSE OF ACTION**

11 (Hostile Work Environment, Cal. Gov. Code §§ 12940(j) and (k))

12 (By Plaintiffs Ross, Smith and Jackson Against All Defendants)

13 119. Plaintiffs replead, reallege, and incorporate by reference each and every
14 allegation set forth in the Complaint.

15 120. Defendants were the employer of Plaintiffs for purposes of Government Code
16 section 12940(j)(4)(A).

17 121. Each Plaintiff was subjected to severe and pervasive harassment while
18 working for Defendants, which caused the creation and maintenance of a hostile and
19 abusive work environment. Plaintiff was subjected to unwanted harassing conduct,
20 derogatory comments, improper relationships between a manager and other employees, as
21 well as other harassing conduct by Defendants, its employees, and its managers.

22 122. During the course of her employment with Defendant, each Plaintiff—
23 because of her gender and race—was continuously discriminated against, harassed, and
24 subjected to a hostile work environment by the actions, conduct, and comments of
25 Defendants, its employee, and its manager. These actions constituted a continuing
26 violation of Government Code section 12940 *et seq.*

27 123. Reasonable persons in Plaintiff’s circumstances would have considered the
28

1 work environment to be hostile or abusive.

2 124. The harassment was sufficiently pervasive so as to alter the conditions of
3 employment, and it created an abusive and hostile working environment. Plaintiff
4 considered the work environment to be hostile and abusive.

5 125. The actions of Defendants, their employees, and their managers constituted
6 unlawful discrimination in employment, based on harassment, in contravention of the
7 FEHA, California Government Code section 12900 *et seq.*, and the corresponding
8 regulations of the DFEH, which forbid discrimination in the workplace and adverse
9 employment actions on account of gender, sex, race and marital status. Plaintiff's
10 supervisors were aware, approved, and even participated in, such offending conduct.

11 126. Defendants knew or should have known of the harassment and discrimination
12 and offensive conduct to take immediate and appropriate corrective action, but failed to
13 properly investigate the harassment and discrimination, which caused and contributed to
14 the existence of the hostile work environment as alleged herein. Further, Plaintiff alleges
15 that Defendant had full knowledge of the hostile work environment, including by reason
16 of the personal complaint that Plaintiff made to management, but nonetheless, Defendant
17 failed to rectify—or even address—the behavior of the persons creating the hostile work
18 environment.

19 127. As a proximate result of the actions and failures to act by Defendant,
20 Plaintiffs suffered physical, emotional, and economic injury. As a further proximate,
21 foreseeable and direct result of the discriminatory acts, Plaintiff continues to suffer
22 physical harm, humiliation, embarrassment, mental and emotional distress, and
23 discomfort, all to Plaintiff's damages in an amount according to proof.

24 128. The actions of Defendant's employee were done with malice, fraud, and/or
25 oppression, and in reckless disregard of Plaintiff's rights under California law

26 129. Defendant ratified the malicious, fraudulent, and/or oppressive conduct of its
27 employees when it failed to prevent it.
28

1 130. Defendant engaged in conduct constituting an unlawful employment practice
2 in violation of California Government Code section 12940(a), which conduct was
3 malicious, fraudulent, and/or oppressive. Thus, each Plaintiff is entitled to recover
4 punitive damages from Defendant, in an amount according to proof.

5 131. As a direct and proximate result of the conduct of Defendant in violation of
6 the FEHA, *inter alia*, Plaintiff is entitled, pursuant to FEHA, to recover from Defendant
7 and do pray for remedies allowed under the FEHA, including but not limited to, general
8 and special damages, punitive damages, costs, interest, and attorneys' fees.

9 132. Each Plaintiff filed a complaint with the Department of Fair Employment and
10 Housing ("DFEH"). Each Plaintiff has received the requisite right-to-sue letter issued by
11 the DFEH regarding the claims involving harassment and discrimination herein. Each
12 Plaintiff filed this action within one year of the date of the "right to sue" letter received
13 from the DFEH and therefore has properly exhausted her administrative remedies.

14 **FIFTEENTH CAUSE OF ACTION**

15 (Failure to Take All Reasonable Steps to Prevent Discrimination in Violation
16 of Cal. Government Code § 12940, et seq.)

17 (By Plaintiffs Ross, Smith and Jackson Against All Defendants)

18 133. Plaintiffs hereby incorporate into this Cause of Action by reference all prior
19 paragraphs of this Complaint, as though fully set forth herein.

20 134. At all times herein mentioned, California's Fair Employment and Housing
21 Act, Government Code § 12940 et seq., was in full force and effect and fully binding upon
22 Defendants. Defendants are "employers" within the meaning of the FEHA.

23 135. At all times relevant herein, Plaintiff was an employee or applicant.

24 136. At all times relevant herein, Plaintiff was member of a class of persons
25 protected from discrimination in employment.

26 137. Defendants, and each of them, had an affirmative duty to take all reasonable
27 steps necessary to prevent discrimination and harassment from occurring in the workplace
28

1 pursuant to Government Code sections 12940(j)(1) and 12940(k). California Government
2 Code § 12940(k) provides that it is an unlawful employment practice for an employer to
3 fail to take all reasonable steps necessary to prevent discrimination, retaliation, and
4 harassment from occurring in the workplace.

5 138. By Defendants' conduct, as alleged herein, and by failing to express strong
6 disapproval of harassing and discriminatory practices, by failing to develop appropriate
7 sanctions for harassment, by failing to develop appropriate methods to educate its
8 employees and owners of the gravity of consequences for doing so, failed to conduct
9 reasonable and impartial investigations when Plaintiff complained about discriminatory
10 conduct on the part of Defendant, failed to take reasonable steps necessary to investigate
11 the misconduct and prevent it from occurring and continuing and by failing to take
12 immediate and appropriate corrective action to stop the harassment from occurring,
13 Defendants, and each of them, breached the affirmative duty as set forth in California
14 Government Code §12940(k) by various actions and failures and refusals to act as
15 described herein. These acts included, but are not limited to failing to train, discipline,
16 monitor, enforce and oversee anti-harassment training.

17 139. Defendants' conduct toward Plaintiff as alleged above, constitutes an
18 unlawful employment practice in violation of California Government Code § 12940.

19 140. As a direct, foreseeable and proximate result of Defendants acts, Plaintiff has
20 suffered and continue to suffer foreseeable damages and injury in amounts not ascertained
21 but in excess of the jurisdictional minimum of this Court, including, but not limited to,
22 losses in the conditions of employment other employment benefits, emotional and
23 physical distress, depression, anxiety, humiliation, embarrassment, pain, discomfort and
24 suffering and loss an injury to reputation.

25 141. Defendants' failure to take reasonable steps to prevent discriminatory
26 conduct was a substantial factor in causing Plaintiff's harm, which includes emotional
27 distress and economic loss. As a direct result thereof, Plaintiff has sustained damages
28

1 (including incurring medical bills and lost income) with the precise amount to be
2 established according to proof at trial.

3 142. Defendants have committed the outrageous despicable acts, as herein alleged,
4 maliciously, fraudulently, and oppressively, with the wrongful intent of injuring Plaintiff,
5 and done with ill will and intent to injure Plaintiff and to cause Plaintiff mental anguish,
6 anxiety, and distress, and in conscious disregard of Plaintiff's rights.

7 143. Defendants' acts were done in conscious disregard of the risk of severe
8 emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression,
9 fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages
10 against these Defendants only.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for judgment as follows:

13 1. For an Order that this action may proceed and be maintained as a class
14 action, with an appropriate subclass or subclasses; that the named plaintiff be appointed
15 class representative, and that plaintiff's counsel be named class counsel;

16 2. That, under the First Cause of Action for unpaid overtime wages, this Court
17 enter judgment in favor of award Plaintiff and other aggrieved former and current
18 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
19 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
20 sections of the Labor Code.

21 3. That, under the Second Cause of Action for unpaid minimum wages, this
22 Court enter judgment in favor of award Plaintiff and other aggrieved former and current
23 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
24 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
25 sections of the Labor Code.

26 4. That, under the Third Cause of Action for failing to properly provide meal
27 periods, this Court enter judgment in favor of Plaintiff, and other aggrieved former and
28

1 current employees, their wages, damages, liquidated damages, penalties, civil penalties,
2 attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and
3 other relevant sections of the Labor Code.

4 5. That, under the Fourth Cause of Action for failing to properly provide rest
5 periods, this Court enter judgment in favor of award Plaintiff and other aggrieved former
6 and current employees their wages, damages, liquidated damages, penalties, civil
7 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
8 218.5 and other relevant sections of the Labor Code.

9 6. That, under the Fifth Cause of Action for failing to provide proper itemized
10 wage statements, this Court enter judgment in favor of award Plaintiff and other aggrieved
11 former and current employees their wages, damages, liquidated damages, penalties, civil
12 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
13 218.5 and other relevant sections of the Labor Code.

14 7. That, under the Sixth Cause of Action for failing to properly provide final
15 wages upon termination of employment, this Court enter judgment in favor of Plaintiff
16 and other aggrieved former and current employees and award them their wages, damages,
17 liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all
18 according to proof, pursuant to section 218.5 and other relevant sections of the Labor
19 Code.

20 8. That, under the Seventh Cause of Action for failing to properly indemnify
21 employees for their out of pocket expenses in violation of section 2802 of the California
22 Labor Code, this Court enter judgment in favor of Plaintiff and other aggrieved former
23 and current employees and award them their wages, damages, liquidated damages,
24 penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant
25 to section 218.5 and other relevant sections of the Labor Code.

26 9. That, under the Eighth Cause of Action for taking improper deductions from
27 wages, this Court enter judgment in favor of Plaintiff and other aggrieved former and
28

1 current employees and award them their wages, damages, liquidated damages, penalties,
2 civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
3 218.5 and other relevant sections of the Labor Code.

4 10. That, under the Ninth Cause of Action for violation of the California
5 Business and Professions Code, this Court enter judgment in favor of Plaintiff and other
6 aggrieved former and current employees and award them their wages, damages, liquidated
7 damages, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
8 sections of the Business and Professions Code, deterring employment by Defendants or its
9 agents and employees of any future unlawful, unfair, or deceptive practice.

10 11. That, under the Tenth Causes of Action, this Court enter judgment in favor of
11 Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
12 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
13 of the Labor Code.

14 12. That, under the Eleventh Causes of Action, this Court enter judgment in favor
15 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
16 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
17 of the Labor Code.

18 13. That, under the Twelfth Causes of Action, this Court enter judgment in favor
19 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
20 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
21 of the Labor Code.

22 14. That, under the Thirteenth Causes of Action, this Court enter judgment in
23 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
24 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
25 sections of the Labor Code.

26 15. That, under the Fourteenth Causes of Action, this Court enter judgment in
27 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
28

1 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
2 sections of the Labor Code.

3 16. That, under the Fifteenth Causes of Action, this Court enter judgment in
4 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
5 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
6 sections of the Labor Code.

7 17. For statutory attorney's fees pursuant to Labor Code sections 218.5, 227(e),
8 1194 and 29 U.S.C. section 216.

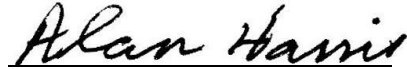
9 18. For costs of suit.

10 19. For prejudgment interest; and

11 20. For such other and further relief as this Court may deem proper and just.
12 Plaintiff demands a trial by jury as to all counts.

13 DATED: October 7, 2024

HARRIS & RUBLE



Alan Harris

David Garrett

Attorney for Plaintiff