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8 Attorneys for Plaintiff,

9 NORMA VELASQUEZ, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO**

12 **(UNLIMITED JURISDICTION)**

13 NORMA VELASQUEZ, as an “aggrieved
14 employee” on behalf of herself and other
15 similarly situated “aggrieved employees”
16 under the Labor Code Private Attorneys
17 General Act of 2004,

18 *Plaintiff,*

19 vs.

20 UTAH LAKE HOLDINGS LLC dba JACOB
21 HEALTHCARE CENTER; JACOB
22 HEALTHCARE CENTER, LP; and DOES 1
23 to 25, inclusive,

24 *Defendants.*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Danielle Cortez, Deputy Clerk

Case No. 37-2024-00003890-CU-OE-CTL

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1
2 Plaintiff, Norma Velasquez (hereafter “Plaintiff” or “Velasquez”), on behalf of herself,
3 the State of California, and the other Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
6 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
7 Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),
8 against Defendants UTAH LAKE HOLDINGS LLC dba JACOB HEALTHCARE CENTER,
9 JACOB HEALTHCARE CENTER, LP, and DOES 1 to 25, inclusive (collectively “JACOB
10 HEALTHCARE” or “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and
13 other related relief. These claims are based on Defendants’ failures to: 1) pay all wages, including
14 minimum, regular, overtime, and doubletime wages earned for all hours worked at the correct
15 rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu thereof;
16 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof;
17 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
18 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
19 employment; 8) provide statements of sick leave available and 9) maintain accurate employment
20 records. Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
21 representative action.

22 **JURISDICTION AND VENUE**

23 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
24 the County of San Diego in this judicial district because Defendants UTAH LAKE HOLDINGS
25 LLC dba JACOB HEALTHCARE CENTER, JACOB HEALTHCARE CENTER, LP, and DOES
26 1 to 25, inclusive do business in the County of San Diego and because Defendants’ obligations
27 and liabilities arise therein, and because the work that was performed by Plaintiff and the
28 Aggrieved Employees in the County of San Diego is the subject of this action. Moreover, the

1 aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief, place more
2 than \$25,000 in controversy.

3 **THE PARTIES**

4 4. Plaintiff NORMA VELASQUEZ is resident of National City, California.

5 5. Defendant UTAH LAKE HOLDINGS LLC dba JACOB HEALTHCARE
6 CENTER is a limited liability company organized and existing under the laws of California and
7 as such, a citizen of California based on Plaintiff's information and belief.

8 6. Defendant JACOB HEALTH CARE CENTER, LP, is a limited partnership
9 organized and existing under the laws of California and as such, a citizen of California based on
10 Plaintiff's information and belief.

11 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
12 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but
13 is informed and believes and thereon alleges that said Defendants are legally responsible for the
14 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
15 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
16 when ascertained.

17 8. The "Aggrieved Employees" are all individuals the Defendants have employed or
18 otherwise contracted with in California as hourly, non-exempt employees, during the period
19 beginning one year before the Plaintiff's notice of October 14, 2023 to the California Labor and
20 Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

21 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
22 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
23 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
24 and scope of such agency or employment, and with the approval and ratification of each of the
25 other Defendants.

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

1 Employees in accordance with applicable California labor laws as alleged herein.

2 11. Plaintiff is informed and believes and thereon alleges that each and every one of
3 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
4 each acting as agents and/or employees, and/or under the direction and control of each of the other
5 defendants, and that said acts and failures to act were within the course and scope of said agency,
6 employment, and/or direction and control.

7 **FACTUAL ALLEGATIONS**

8 12. IWC Wage Order 5-2001 (“the Wage Order”) applies to “all persons employed in
9 the public housekeeping industry,” where “Public Housekeeping Industry” includes “...homes
10 for the aged, and similar establishments offering board or lodging in addition to medical, surgical,
11 nursing, convalescent, aged, or child care...” (Id., §§ 1 & 2(P)(4).) At all relevant times during
12 the applicable limitations period, JACOB HEALTHCARE operated a skilled nursing facility.
13 Accordingly, Plaintiff and the Aggrieved Employees are entitled to the protections provided under
14 the Wage Order.

15 13. JACOB HEALTHCARE first employed Plaintiff as a janitor on or around April
16 1, 2023 to work at its skilled nursing facility located at 4075 54th Street in San Diego, California.
17 Plaintiff generally worked the afternoon shifts, Monday – Friday from 3:00 p.m. to 9:00 p.m.
18 Plaintiff’s employment ended on or around October 4, 2023.

19 14. At all relevant times, JACOB HEALTHCARE issued wages to Plaintiff and all of
20 the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant
21 times, JACOB HEALTHCARE classified Plaintiff and all of the other Aggrieved Employees as
22 non-exempt employees entitled to the protections of the Labor Code and the Wage Order.
23 Plaintiff’s latest rate of pay was approximately \$17.00 per hour.

24 15. JACOB HEALTHCARE failed to pay Plaintiff and the other Aggrieved
25 Employees for all time worked or subject to its control. Plaintiff and the other Aggrieved
26 Employees consistently worked “off the clock” in that the company had a policy and practice of
27 rounding down work hours and “time shaving” which led to Plaintiff and others not being paid
28 for all hours worked, which would include the minimum wage. Moreover, to the extent employees

1 such as Plaintiff and others worked through their meal periods and those meal periods were
2 interrupted, they were not compensated for that time, which would be akin to a minimum wage
3 violation.

4 16. Due to the above “off the clock” violations, JACOB HEALTHCARE failed to pay
5 Plaintiff and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
6 Employees’ actual work hours, which included the “off the clock” work as described above,
7 entitled them to overtime, however, it was not company policy to keep accurate track of all hours
8 worked and to pay employees the accurate amount of overtime, especially since the “off the
9 clock” work was not factored into the equation. Furthermore, any incentive payments and/or
10 bonus payments were not factored into employees’ regular rate of pay for purposes of deciphering
11 the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not
12 factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel,*
13 *LLC* (2021) 11 Cal. 5th 858, 863.

14 17. JACOB HEALTHCARE failed to authorize and permit Plaintiff and others to take
15 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
16 employment. JACOB HEALTHCARE did not completely relieve Plaintiff and others of all duty
17 during said rest periods. JACOB HEALTHCARE did not pay to Plaintiff and others one
18 additional hour of pay at their regular rate of compensation for each workday that one or more
19 statutory rest periods was not provided. It was not part of the company policy for employees such
20 as Plaintiff to take at least two rest breaks per shift. The concept of rest breaks was not consistently
21 implemented as it was not company policy. Moreover, it would not have been possible for
22 employees such as Plaintiff to take such rest breaks due to a heavy workload. Throughout her
23 employment, Plaintiff’s rest breaks were often interrupted. As such, the culture as well as the
24 policies and procedures of JACOB HEALTHCARE did not lend itself to the employees receiving
25 consistent statutory rest breaks wherein they were relieved of all work duties. The environment
26 at JACOB HEALTHCARE was not conducive to receiving multiple statutory rest breaks under
27 California law and timely, statutory rest breaks were not authorized or enforced.

28 18. JACOB HEALTHCARE failed to provide Plaintiff and the other Aggrieved

1 Employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
2 throughout their employment. JACOB HEALTHCARE did not completely relieve Plaintiff and
3 other employees of all duty during said meal periods. JACOB HEALTHCARE did not pay to
4 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of
5 compensation for each workday that one or more statutory meal periods was not provided. The
6 hourly, non-exempt employees would often not be able to receive timely meal periods before the
7 5th hour worked that were actually uninterrupted. The latter was due to the workload and
8 understaffing. For example, during instances wherein Plaintiff was able to take a meal break,
9 Plaintiff 's manager, Refugio Casillas constantly interrupted Plaintiff's breaks with instructions
10 and assigning new tasks. Like the rest breaks, receiving a thirty-minute uninterrupted and timely
11 meal break was not part of the company culture and was not enforced by JACOB
12 HEALTHCARE. Consequently, it was the normal practice and custom of JACOB
13 HEALTHCARE not to authorize, permit, and enforce timely statutory meal periods.

14 19. If JACOB HEALTHCARE had Plaintiff sign a meal period waiver, it would not
15 be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift.
16 Even if Plaintiff and others' shifts were less than 6 hours, Plaintiff did not sign a meal period
17 waiver wherein she was able to revoke the agreement. If JACOB HEALTHCARE had Plaintiff
18 sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods,
19 it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
20 prevent her from taking a meal period and the company could have hired additional staff to relieve
21 Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period.
22 Moreover, any such "on duty" meal period agreement did not allow Plaintiff and others to revoke
23 such an agreement even if it was signed. As such, Plaintiff and others did not receive statutory,
24 timely meal periods during their employment. To the extent that JACOB HEALTHCARE argues
25 that employees receive meal break premium pay for missed meal periods, that argument is
26 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
27 themselves, irrespective of whether an employee received the premium payment for a missed,
28 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,

1 “section 226.7 does not give employers a lawful choice between providing either meal and rest
2 breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th
3 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the
4 employer has still committed a violation even if the remedy for the violation has been paid. See
5 *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work
6 environment and culture at JACOB HEALTHCARE was not conducive to receiving consistent,
7 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
8 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
9 incentive payments as well as overtime compensation.

10 20. JACOB HEALTHCARE failed to reimburse Plaintiff and the other Aggrieved
11 Employees for business expenses they incurred in direct consequence of the discharge of their
12 duties. JACOB HEALTHCARE required Plaintiff and the Aggrieved Employees to purchase and
13 wear scrubs at the workplace and to use their own personal cell phones to communicate with
14 management concerning work matters. However, JACOB HEALTHCARE did not provide
15 Plaintiff and the others with mobile phones and did not reimburse Plaintiff and the other
16 Aggrieved Employees for these mobile phone expenses and uniform expenses. Accordingly,
17 JACOB HEALTHCARE was in violation of California Labor Code sections 2800 and 2802.

18 21. JACOB HEALTHCARE failed to pay its employees all wages due to them within
19 any time period specified by California Labor Code section 204, including the minimum wages
20 and overtime as described above as well as meal/rest break premiums.

21 22. JACOB HEALTHCARE did not provide Plaintiff and the other Aggrieved
22 Employees accurate, itemized wage statements. Wage statements must include, among other
23 things, total hours worked by the employee. Labor Code § 226(a)(2). JACOB HEALTHCARE
24 issued wage statements that inaccurately reflected total hours worked, gross and net wages earned,
25 and the number of hours worked at each hourly rate because of JACOB HEALTHCARE’s failure
26 to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). JACOB
27 HEALTHCARE’s failure to maintain accurate records as to the hours worked daily by employees
28 also constitutes a violation of Labor Code section 1174(d).

1 23. Finally, because JACOB HEALTHCARE did not properly pay all wages earned
2 as explained herein, JACOB HEALTHCARE also failed to pay final wages owed to Plaintiff and
3 the other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid
4 wages include minimum wages and compensation for all hours worked, overtime compensation,
5 premium pay for missed meal and rest breaks, and business expense reimbursement, among
6 others.

7 24. JACOB HEALTHCARE failed to provide Plaintiff and all of the other Aggrieved
8 Employees with an itemized wage statement or separate writing that set forth the amount of paid
9 sick leave available.

10 25. JACOB HEALTHCARE has also violated Labor Code section 558 and engaged
11 in business practices which violate Business and Professions Code Section 17200.

12 26. Accordingly, Plaintiff now seeks civil penalties on behalf of herself and the
13 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
14 the Wage Order.

15 **FIRST (AND ONLY) CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698, *et seq.*)**

18 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
19 **Defendants)**

20 27. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 28. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
22 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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

25 29. Section 2(K) of the Wage Order defines "hours worked" as "the time during which
26 an employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so."

28 30. Section 3 of the Wage Order states:

 The following overtime provisions are applicable to employees 18 years of age or
 over and to employees 16 or 17 years of age who are not required by law to attend

1 school and are not otherwise prohibited by law from engaging in the subject work.
2 Such employees shall not be employed more than eight (8) hours in any workday
3 or more than 40 in a workweek unless the employee receives one and one half
4 (1½) times such employee's regular rate of pay for all hours worked over 40 hours
5 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
6 beyond eight (8) hours in any workday or more than six (6) days in any workweek
7 is permissible provided the employee is compensated for such overtime at not less
8 than:

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

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

23 32. Labor Code section 510 states:

24 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
25 in one workday and any work in excess of 40 hours in any one workweek and the
26 first eight hours worked on the seventh day of work in any one workweek shall be
27 compensated at the rate of no less than one and one-half times the regular rate of
28 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.

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

34. Labor Code section 1197 makes it unlawful for an employer to pay an employee
less than the minimum wage required under the applicable Wage Order for all hours worked

1 during a payroll period.

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

4 36. In conjunction, these provisions of the Labor Code require employers to pay non-
5 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
6 worked, including unrecorded hours when the employer knew or reasonably should have known
7 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
8 Cal.4th 575, 585.)

9 37. At all relevant times during the applicable limitations period, Defendants failed to
10 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
11 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

12 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
14 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
15 required by California law.

16 **B. FAILURE TO PROVIDE MEAL PERIODS**

17 39. In relevant part, California Labor Code § 1198 states:

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

22 40. In relevant part, In relevant part, California Labor Code § 512 states:

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

An employer shall 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.

1 41. In relevant part, Section 11 of the Wage Order states:

2 Meal Periods:

3 (A) No employer shall employ any person for a work period of
4 more than five (5) hours without a meal period of not less than
5 30 minutes, except that when a work period of not more than
6 six (6) hours will complete the day's work the meal period may
7 be waived by mutual consent of the employer and employee.
8 Unless the employee is relieved of all duty during a 30 minute
9 meal period, the meal period shall be considered an "on duty"
10 meal period and counted as time worked. An "on duty" meal
11 period shall be permitted only when the nature of the work
12 prevents an employee from being relieved of all duty and when
13 by written agreement between the parties an on-the-job paid
14 meal period is agreed to. The written agreement shall state that
15 the employee may, in writing, revoke the agreement at any
16 time.

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

22 42. In relevant part, California Labor Code § 226.7 states:

23 (b) An employer shall not require an employee to work during
24 a meal or rest period mandated pursuant to an applicable
25 statute, or applicable regulation, standard, or order of the
26 Industrial Welfare Commission, the Occupational Safety
27 and Health Standards Board, or the Division of
28 Occupational Safety and Health.

29 (c) If an employer fails to provide an employee a meal period
30 or rest period in accordance with a state law, including, but
31 not limited to, an applicable statute or applicable
32 regulation, standard, or order of the Industrial Welfare
33 Commission, the Occupational Safety and Health
34 Standards Board, or the Division of Occupational Safety
35 and Health, the employer shall pay the employee one
36 additional hour of pay at the employee's regular rate of
37 compensation for each work day that the meal or rest
38 period is not provided.

39 43. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
40 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each

1 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
2 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

3 44. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
4 with all required timely 30-minute meal periods free from any work duties in accordance with the
5 Wage Order.

6 45. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
7 Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
8 premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
9 Employees with timely meal periods.

10 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
13 meal periods required by California law.

14 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

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

16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21 48. In relevant part, Section 12 of the Wage Order states:

22 Rest Periods:

23 (A) Every employer shall authorize and permit all employees to take
24 rest periods, which insofar as practicable shall be in the middle of
25 each work period. The authorized rest period time shall be based
26 on the total hours worked daily at the rate of ten (10) minutes net
27 rest time per four (4) hours or major fraction thereof. However, a
28 rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized
rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday

that the rest period is not provided.

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

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

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

50. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

51. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

52. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

53. At all relevant times, due to high workload, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

1 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
4 Employees to take all rest breaks required by California law.

5 **D. FAILURE TO INDEMNIFY**

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

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

11 57. At all relevant times during the applicable limitations period, as a condition for
12 employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain
13 business expenses. These costs include, but are not limited to, uniforms, and use of personal cell
14 phones to communicate with management concerning work matters. However, Defendants did
15 not reimburse Plaintiff and the others for these business expenses.

16 58. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
17 for expenditures incurred as a direct consequence of discharging their duties in violation of
18 California Labor Code sections 2800 and 2802.

19 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants’
21 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
22 incurred during the course of performing their duties.

23 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
24 **STATEMENTS**

25 60. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
26 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
27 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
28 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
each hourly rate by the employee.

 61. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

1 the employer fails to provide accurate and complete information as required by California Labor
2 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
3 alone one or more of the following:

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

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

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

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

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

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

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

26 64. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
27 accurate wage statements was knowing and intentional. Defendants had the ability to provide
28 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
provided wage statements that Defendants knew were not accurate.

65. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive

1 accurate wage statements were violated and they were misled about the amount of wages they
2 had actually earned and were owed. In addition, the absence of accurate information on their wage
3 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
4 discovery and mathematical computations to determine the amounts of wages owed, has caused
5 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
6 submission of inaccurate information about wages to state and federal government agencies.
7 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
8 statements whether Defendants complied with their obligations under California Labor Code
section 226(a).

9 **F. UNTIMELY WAGES DURING EMPLOYMENT**

10 66. Labor Code § 204 states:

11 (a) All wages, other than those mentioned in Section 201,
12 201.3, 202, 204.1, or 204.2, earned by any person in any
13 employment are due and payable twice during each
14 calendar month, on days designated in advance by the
15 employer as the regular paydays. Labor performed
16 between the 1st and 15th days, inclusive, of any calendar
17 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. ...

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

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

28 (c) However, when employees are covered by a collective
bargaining agreement that provides different pay

arrangements, those arrangements shall apply to the covered employees.

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

67. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

G. UNTIMELY FINAL WAGES

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

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

70. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

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

1 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

2 72. Labor Code § 1174 states:

3 Every person employing labor in this state shall:

4 ...

5 (c) Keep a record showing the names and addresses of all employees
6 employed and the ages of all minors.

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

17 73. Labor Code § 1174.5 states:

18 Any person employing labor who willfully fails to maintain the records required
19 by subdivision (c) of Section 1174, or to allow any member of the commission
20 or employees of the division to inspect records pursuant to subdivision (b) of
21 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

22 74. Section 7 of the Wage Order states:

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

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

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

28 (3) Time records showing when the employee begins and ends
each work period. Meal periods, split shift intervals and
total daily hours worked shall also be recorded. Meal
periods during which operations cease and authorized rest
periods need not be recorded.

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

1 (5) Total hours worked in the payroll period and applicable
2 rates of pay. This information shall be made readily
3 available to the employee upon reasonable request.

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

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

10 76. On information and belief, Defendants have willfully failed to maintain the records
11 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
12 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
13 and the Aggrieved Employees.

14 77. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on
15 behalf of herself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved
16 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
17 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
18 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
19 pay period (penalties set by Labor Code section 2699(f)(2)).

20 **I. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

21 78. Labor Code § 246 states,

22 An employer shall provide an employee with written notice that sets forth the
23 amount of paid sick leave available, or paid time off leave an employer provides
24 in lieu of sick leave, for use on either the employee's itemized wage statement
25 described in Section 226 or in a separate writing provided on the designated pay
26 date with the employee's payment of wages.

27 79. Defendants failed to provide Plaintiff and all of the other Aggrieved Employees
28 with an itemized wage statement or separate writing that set forth the amount of paid sick leave
available. Accordingly, Plaintiff seeks civil penalties on behalf of herself and all of the other
Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per Aggrieved
Employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per
Aggrieved Employee per pay period in which subsequent violations of § 246 occurred (penalties

1 set by Labor Code § 2699(f)(2)).

2 **J. CIVIL PENALTIES SOUGHT**

3 80. During the applicable time period, Defendants violated California Labor Code
4 §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1198, 2802, and related
5 Labor Code statutes.

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

9 82. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
10 Employees are entitled to recover civil penalties for each of the Defendants' violations of
11 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1197,
12 1198 and 2802 during the applicable limitations period in the following amounts:

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
15 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226, two hundred fifty dollars
18 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
19 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

20 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
23 each pay period for which the employee was underpaid (penalty amounts established by
24 California Labor Code § 558).

25 D. For violations of California Labor Code § 1174, five hundred dollars
26 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
27 by Labor Code § 1174.5).

28 E. For violations of California Labor Code § 1197, one hundred dollars

1 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
3 (regardless of whether the initial violations were intentionally committed) (penalty amounts
4 established by California Labor Code § 1197.1).

5 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 246,
6 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
7 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
8 period for each subsequent violation (penalty amounts established by California Labor Code
9 § 2699(f)(2)).

10 **K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

11 83. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letters dated October 14, 2023 and January 16, 2024, Plaintiff gave
13 written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”)
14 and Defendants of the specific provisions of the California Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. The LWDA has failed
16 to take action in response within 65 days of Plaintiff’s notice.

17 84. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
18 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
19 connection with their claims for civil penalties.

20 **PRAYER FOR RELIEF**

21 85. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees,
22 prays for relief and judgment against Defendants as follows:

- 23 A. Civil penalties;
24 B. Costs of suit;
25 C. Reasonable attorneys’ fees; and
26 D. Such other relief as the Court deems just and proper.

27 **DEMAND FOR JURY TRIAL**

28 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury

1 trial on all issues so triable.

2
3 Respectfully submitted,

MM LAW, APC

4
5 Dated: January 25, 2024

By: Maralle Messrelian
Maralle Messrelian, Esq.
Attorney for Plaintiff,
NORMA VELASQUEZ, and all others
similarly situated