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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11 MARLENE BENITEZ, an individual, on)
12 behalf of the State of California and)
13 aggrieved employees pursuant to the)
14 Private Attorneys General Act (PAGA))

15 Plaintiffs,)

16 vs.)

17 MHF MV MANAGER VI LLC, a)
18 Delaware limited liability company;)
19 MHF MV OPERATING VI LLC dba)
20 COURTYARD SAN DIEGO MISSION)
21 VALLEY/HOTEL CIRCLE, a Delaware)
22 limited liability company; MHF MV VI)
23 LLC, a Delaware limited liability)
24 company; and DOES 1 through 50,)

25 Defendants.)
26)
27)
28)

Case No.: **24CV080932**

**COMPLAINT VIA THE PAGA
FOR:**

- 1. Failure to pay minimum/regular wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Pay Wages Timely;**
- 4. Failure to Comply with Meal and Rest Break Laws;**
- 5. Failure to Provide Accurate Wage Statements;**
- 6. Failure to Maintain Records;**
- 7. Failure to Reimburse Expenses;**
- 8. Sick Pay Violations; and**
- 9. Violations of Various Miscellaneous Provisions of the Labor Code via the PAGA.**

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8 Plaintiffs MARLENE BENITEZ on behalf of the State of California and acting
9 for the interests of other current and former employees (“Aggrieved Employees” or
10 “Plaintiffs”), allege the following:

11 **NATURE OF THE ACTION**

12 1. Plaintiff is not suing in her individual capacity; she is proceeding herein
13 solely under the Private Attorneys General Act (PAGA) of 2004, as amended, Labor
14 Code §§ 2698, *et seq.*, seeking civil penalties on behalf of the State of California and
15 for all Aggrieved Employees. *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104
(2023); *Balderas v. Fresh Start Harvesting*, 101 Cal. App. 5th 533 (2024).

16 **JURISDICTION AND VENUE**

17 2. Pursuant to Article VI, § 10 of the California Constitution, subject matter
18 jurisdiction is proper in the Superior Court of California, County of San Diego, State
19 of California because Plaintiffs allege claims arising under California law.

20 3. This Court has jurisdiction over the Defendants because each is an
21 association, corporation, business entity, or individual that conducts substantial
22 business in the State of California.

23 4. Pursuant to § 395 of the California Code of Civil Procedure, venue is
24 proper in the Superior Court of California for the County of Alameda because
25 Defendants are doing business in the County of Alameda, California and because
26 PAGA enforcement actions are not limited to the county in which Aggrieved
27 Employees performed work. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60
28

1 Cal. App. 5th 1069, 1075 (2021) (in a PAGA action, a plaintiff is not limited to the
2 county in which he or she performed work).

3 **THE PARTIES**

4 5. Plaintiff MARLENE BENITEZ is an individual and resident of
5 California.

6 6. Defendant MHF MV MANAGER VI LLC is a Delaware limited liability
7 company doing business in California.

8 7. Defendant MHF MV OPERATING VI LLC dba COURTYARD SAN
9 DIEGO MISSION VALLEY/HOTEL CIRCLE is a Delaware limited liability
10 company doing business in California.

11 8. Defendant MHF MV VI LLC is a Delaware limited liability company
12 doing business in California.

13 9. The true names and capacities, whether individual, corporate, associate or
14 otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
15 Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names
16 pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave
17 to amend this Complaint to allege the true names and capacities of DOES 1 through 50
18 when their names are ascertained. Plaintiffs are informed and believe, and based
19 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs
20 for the events and actions alleged herein.

21 10. Unless otherwise specified by name, the named Defendants and DOES 1
22 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
23 "Defendants."

24 11. Plaintiffs are informed and believe, and based thereon allege, that each
25 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter
26 ego for each of the other Defendants and each were co-conspirators with respect to the
27 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
28 the other pursuant to the conspiracy and in proximate connection with the other

1 Defendant(s).

2 12. Plaintiffs are informed and believe, and based thereon allege, that each
3 Defendant was acting partly within and partly without the scope and course of their
4 employment, and was acting with the knowledge, permission, consent, and ratification
5 of every other Defendant.

6 13. Plaintiffs are informed and believe, and based thereon allege that each of
7 the Defendants was an agent, managing general partner, managing member, owner, co-
8 owner, partner, employee, and/or representative of each of the Defendants and was at
9 all times material hereto, acting within the purpose and scope of such agency,
10 employment, contract and/or representation, and that each of them is jointly and
11 severally liable to Plaintiffs.

12 14. Plaintiffs are informed and believe, and based thereon allege that each of
13 the Defendants is liable to Plaintiffs under legal theories and doctrines including but
14 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
15 ego, based in part, on the facts set forth below.

16 15. Plaintiffs are informed and believe, and based thereon allege, that each
17 of the named Defendants are part of an integrated enterprise and have acted or
18 currently act as the employer and/or joint employer of the Plaintiffs/Class Members
19 making each of them liable for the wage and hour violations alleged herein.

20 16. Plaintiffs are informed and believe, and therefore allege, that one, more
21 than one, or each of the named Defendants are liable to the Plaintiffs under legal
22 theories and doctrines including but not limited to (1) the common law joint employer
23 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
24 Defendants worked as the central hub to an overall business operation by which the
25 interrelationship between these Defendants makes each of the Defendants liable for
26 the wage and hour violations alleged herein.

27 **GENERAL ALLEGATIONS**

28 17. Defendants are in the hotel business.

1 18. During all times relevant, Defendants hired and employed the named
2 Plaintiff as a nonexempt worker.

3 19. The named Plaintiff is an “aggrieved employee” within the meaning of
4 the PAGA because Defendants employed Plaintiffs in California and Plaintiffs
5 experienced one or more of the alleged Labor Code violations committed against the
6 Plaintiff, and therefore the named Plaintiff is properly suited to act on behalf the state,
7 and collect civil penalties for all violations committed against the Aggrieved
8 Employees, who are also aggrieved employees as defined by Labor Code § 2699(c).

9 20. California law provides that an aggrieved employee may file a
10 representative action under the PAGA against an employer for civil penalties in
11 connection with violations of the Labor Code and Wage Order.

12 21. On information and belief, current and former employees of Defendants
13 suffered from Defendants’ Labor Code violations.

14 **Minimum Wage/Regular Wage claims.**

15 22. During all times relevant, Plaintiffs are informed and believe and thereon
16 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
17 EMPLOYER paid Aggrieved Employees wages at less than the rate required under
18 state, federal, and local law.

19 23. Plaintiffs are informed and believe and thereon allege that Defendants, for
20 example, had a habit of calling Aggrieved Employees when they were off the clock to
21 ask them work-related questions, requiring Aggrieved Employees to perform pre and
22 post-shift work (e.g., COVID-19 screenings), thus causing Aggrieved Employees to
23 work off the clock depriving Aggrieved Employees from compensation.

24 24. Plaintiffs are informed and believe and thereon allege that Defendants
25 used a timekeeping system whereby Defendants rounded down Aggrieved Employees’
26 worktime, resulting in lost wages in an amount to be determined at trial.

27 25. Plaintiffs are informed and believe and thereon allege that Defendants
28 used an unlawful tip pooling system.

1 26. Plaintiffs are informed and believe and based thereupon allege that
2 Defendants failed to ensure that Aggrieved Employees fully received the gratuities
3 left for them by patrons because Defendants' managers and its agents would collect
4 and/or take a portion of the gratuities for themselves, in violation of Labor Code §
5 351.

6 27. Based on further information and belief, Plaintiffs are informed and
7 believe and based thereupon allege that Defendants also failed to keep accurate
8 records of all tips received, in violation of Labor Code § 353.

9 28. Plaintiffs are informed and believe and based thereupon allege that
10 Defendants failed to pay gratuities paid by customers using credit cards to Aggrieved
11 Employees by the next regular payday following the credit card payment, in violation
12 of Labor Code § 351.

13 29. Plaintiffs are informed and believe and based thereupon allege that
14 Defendants charged an additional service charge to its customers/patrons and
15 customers are led to believe that the service charge will be paid to Defendants'
16 Aggrieved Employees.

17 30. Instead, Plaintiffs are informed and believe and based thereupon allege
18 that Defendants keep a majority (if not the entirety) of the service charge, thereby
19 depriving Aggrieved Employees of the service charge/gratuity that is left by the
20 patron/customer for the Aggrieved Employees. *See O'Grady v Merchant Exchanges*
21 *Production, Inc.*, 41 Cal. App. 5th 771, 790 (2019) (a mandatory service charge can
22 constitute a gratuity that is intended to the employees providing the service).

23 31. Further, Defendants paid the named Plaintiff \$135.60 in "retroactive" pay,
24 indirect evidence that Defendants underpaid Plaintiff wages in an amount to be proved
25 at trial.

26 32. As a result of the foregoing, Defendants refused to pay Aggrieved
27 Employees for the above-described hours at their regular rate or minimum wage rate in
28 an amount to be determined at trial.

1 33. This claim is also premised on Plaintiffs' right to pursue all Labor Code
2 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
3 *Inc.*, 23 Cal. App. 5th 745 (2018).

4 **Failure to Pay State Overtime.**

5 34. During all times relevant, Plaintiffs are informed and believe and thereon
6 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
7 EMPLOYER failed to pay Aggrieved Employees state overtime compensation and/or
8 the correct amount of overtime and sick pay compensation.

9 35. This claim is generally premised on the facts described above, but when
10 Aggrieved Employees also had the right to overtime compensation, Defendants failed
11 to pay Aggrieved Employees overtime in an amount to be proven at trial.

12 36. Further, Plaintiffs are informed and believe and thereon allege that
13 DEFENDANT EMPLOYER failed to pay Aggrieved Employees for the right amount
14 of overtime and sick pay due to Defendants' failure to include "incentive pay" into
15 Aggrieved Employees' regular rate of pay for overtime and/or sick pay purposes in an
16 amount to be proven at trial.

17 37. This claim is also premised on Plaintiffs' right to pursue all Labor Code
18 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
19 *Inc.*, 23 Cal. App. 5th 745 (2018).

20 **Meal and Rest Break Claims.**

21 38. During all times relevant, Plaintiffs are informed and believe and thereon
22 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
23 EMPLOYER failed to authorize and/or permit Aggrieved Employees to take all their
24 compliant off-duty meal and rest breaks during the required timeframe as required by
25 law and failed to pay them premium pay, in an amount to be proven at trial.

26 39. Plaintiffs are informed and believe and thereon allege that when
27 Aggrieved Employees worked more than five and/or ten hours in a workday, they were
28 deprived their right to take lawful meal breaks and Defendants failed to pay them

1 premium pay for the missed or noncompliant meal breaks, in an amount to be proven
2 at trial.

3 40. By way of example, Plaintiffs are informed and believe and thereon allege
4 that Aggrieved Employees clocked out for meal breaks but would many times continue
5 working, thus unlawfully depriving them of an uninterrupted meal break.

6 41. As for rest breaks, because of Defendants' policy, practice, and work
7 demands, Defendants prevented Aggrieved Employees from taking all their
8 uninterrupted rest breaks to which they had the right to enjoy, in an amount to be
9 proven at trial, and Defendants failed to pay them premium pay as required under
10 California law. *See Augustus v. ABM Security Services*, 2 Cal. 5th 257 (2016).

11 42. The foregoing are examples of what Plaintiffs believe are many instances
12 of how Defendants prevented Plaintiffs/Aggrieved Employees from taking their lawful
13 breaks.

14 43. This claim is also premised on Plaintiffs' right to pursue all Labor Code
15 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA,*
16 *Inc.*, 23 Cal. App. 5th 745 (2018).

17 **Failure to Reimburse.**

18 44. During all times relevant, Plaintiffs are informed and believe and thereon
19 allege that pursuant to company policy and/or practice and/or direction, DEFENDANT
20 EMPLOYER required Aggrieved Employees to incur various work-related expenses
21 which were never reimbursed.

22 45. Plaintiffs are informed and believe and thereon allege the unreimbursed
23 purchases the named Plaintiffs and Aggrieved Employees were required to make to
24 perform their work include, but are not limited to cell phone and cell phone data. *See*
25 *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014) ("We hold
26 that when employees must use their personal cell phones for work-related calls, Labor
27 Code section 2802 requires the employer to reimburse them. Whether the employees
28 have cell phone plans with unlimited minutes or limited minutes, the reimbursement

owed is a reasonable percentage of their cell phone bills.”)

46. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018).

Erroneous Wage Statements in Violation of Labor Code § 226.

47. During all times relevant, and pursuant to company policy and/or practice and/or direction and continuing to the present, and pursuant to company policy and/or practice and/or direction, Plaintiffs are informed and believe and thereon allege that Defendants issued confusing and inaccurate wage and earning statements to Aggrieved Employees in violation of Labor Code § 226.

48. Plaintiffs allege Aggrieved Employees’ paystubs were inaccurate because Defendants failed to pay them all wages, as alleged above, supporting a derivative claim under Labor Code § 226.

49. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018).

Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, 256, etc.

50. During all times relevant and pursuant to the above-mentioned policies, Plaintiffs are informed and believe and thereon allege that DEFENDANT EMPLOYER failed to pay all wages to which Aggrieved Employees had the right to receive under the law in a timely manner.

51. As to the named Plaintiffs specifically, as alleged above Defendants failed to timely pay Plaintiffs wages in violation of the Labor Code including but not limited to §§ 201-203, and 204.

52. Derivative claims are also premised on Plaintiffs’ right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018).

1 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

2 53. This is a PAGA enforcement action filed pursuant to Labor Code §§
3 2698, 2699 that generally consists of the following group:

4 **All persons Defendants employed in the State of California**
5 **from May 22, 2023 to the present.**

6 54. All members of the above group will be referred to as the “Aggrieved
7 Employees.”

8 55. The “PAGA Period” means from **May 22, 2023** to the present, the
9 timeframe where the scope of statute allows Plaintiffs to recover penalties.

10 56. California law provides that an employee may file an action against an
11 employer to recover penalties for violations of the Labor Code and Wage Orders
12 provided the aggrieved employee files an action on behalf of him/her or herself/himself
13 and similarly-situated current and former employees.

14 57. At all material times, DEFENDANT EMPLOYER and DOES 1 through
15 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
16 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
17 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
18 Labor Code or any provision regulating hours and days of work in any Order of the
19 Industrial Welfare Commission and, as such, are subject to penalties for each
20 underpaid employee as set for in Labor Code § 558.

21 58. As set forth in further detail below, because of the analysis and
22 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent correspondence to the
23 California Labor and Workforce Development Agency (LWDA) and to DEFENDANT
24 EMPLOYER informing DEFENDANT EMPLOYER of their claims and their intent to
25 pursue litigation.

26 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

27 59. On or about **May 22, 2024**, Plaintiffs began to exhaust his/her
28 administrative remedies by sending correspondence to the LWDA and via certified

1 mail to DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims
2 alleged in this Complaint pursuant to the PAGA.

3 60. By the time the statutory period for Plaintiffs expires from the first letter
4 alleged above, the LWDA likely will not have served Plaintiffs with notice of intent
5 to assume jurisdiction over the applicable penalty claims and did not provide notice as
6 set forth in Labor Code § 2699.3(a)(2)(A) within the statutory period, but more to
7 follow as time expires before this Complaint is amended to report the actual facts.

8 61. Therefore, once the statutory waiting period expires based on the
9 presumed facts above, Plaintiffs will have exhausted all applicable administrative
10 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
11 Complaint.

12 **FIRST CAUSE OF ACTION**

13 **Representative Claim for PAGA Penalties**

14 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

15 **Failure to Pay Local/State Minimum/Regular/Prevailing Wages**

16 **in Violation of California Labor Code §§ 1194, 1197, 1197.1,**

17 **1771, 1774, 1776, 1811, and 1815, 1198, and the applicable Industrial Welfare**

18 **Commission (IWC) Wage Order via § 1198, and**

19 **where applicable the Local Min. Wage Ordinance**

20 **(Against all Defendants)**

21 62. Plaintiffs re-allege and incorporate by reference the foregoing
22 allegations, as though set forth herein.

23 63. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
24 1815, and 1198, it is unlawful for a California employer to suffer or permit an
25 employee to work without paying wages for all hours worked, as required by the
26 applicable IWC Wage Order and, where applicable on public works projects,
27 prevailing wage laws.

28 64. During all times relevant, Defendants were required to pay Plaintiffs and

1 other Aggrieved Employees their respective hourly rate for all hours worked and/or
2 minimum wages and/or prevailing wages per state law or applicable local law.

3 65. During all times relevant, at least one of the IWC Wage Orders applied
4 to Plaintiffs' employment with Defendants.

5 66. Pursuant to the applicable Wage Order, "hours worked" include the time
6 during which an employee is "suffered or permitted to work, whether or not required
7 to do so."

8 67. Under state and, where appropriate, local law, every employer must pay
9 each nonexempt employee minimum wages. (*See, e.g.*, Los Angeles County
10 Minimum Wage Ordinance; San Diego Minimum Wage Ordinance, etc.)

11 68. Plaintiffs seek to recover penalties pursuant to the PAGA from the
12 Defendants for any violations of the foregoing laws during the proposed PAGA
13 Period.

14 69. Labor Code § 1194 subdivision (a) permits an action to recover wages
15 because of the payment of a wage less than the minimum wage "applicable to the
16 employee" including attorneys' fees, costs, and interest.

17 70. At all material times, Defendants were and/or are Aggrieved Employees'
18 employers or persons acting on behalf of Aggrieved Employees' employer, within the
19 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to civil
20 penalties for each underpaid employee as set for in Labor Code § 558.

21 71. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
22 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
23 period for the initial violation and two hundred (\$200.00) for each aggrieved
24 employee per pay period for each subsequent violation in which Defendants violated
25 the minimum wage and/or regular wage provisions of the Labor Code, including but
26 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
27 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is
28 all in an amount to be shown according to proof at trial.

72. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein all in an amount to be shown according to proof at trial.

SECOND CAUSE OF ACTION

Representative Claim for PAGA Penalties

Under California Labor Code §§ 2698, 2699, *et seq.* for

Failure to Pay State Overtime and/or Double-Time Compensation

in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, §§ 351-356, 1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the

Applicable IWC Wage Order

(Against all Defendants)

73. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

74. California law requires an employer to pay each employee for the actual hours worked. *See* Cal. Labor Code §§ 200, 226.

75. During all times relevant, one or more of the IWC Wage Orders applied to Plaintiffs' employment with Defendants.

76. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage Order 4, “hours worked” include the time during which an employee is “suffered or permitted to work, whether or not required to do so.”

77. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40) hours in a week and eight (8) hours in a day, the employer must pay the employee's regular hourly wage.

78. For each hour (or fraction thereof) an employee works over forty (40) hours in a week or more than eight (8) hours in a workday the employer must pay the rate of one and a half times the employee's regular hourly wage.

79. For each hour (or fraction thereof) an employee works more than twelve

1 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
2 day of work, the employer must compensate the employee at the rate of no less than
3 twice the regular rate of pay for that employee.

4 80. At all material times, Defendants were and/or are Aggrieved Employees'
5 employers or persons acting on behalf of Aggrieved Employees' employer, within the
6 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to
7 penalties for each underpaid employee as set for in Labor Code § 558.

8 81. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
9 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
10 period for the initial violation and two hundred (\$200.00) for each aggrieved
11 employee per pay period for each subsequent violation in which Defendants violated
12 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
13 and 1194, the exact amount of the penalties sought is in an amount to be shown
14 according to proof at trial.

15 82. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
16 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein all
17 in an amount to be shown according to proof at trial.

18 **THIRD CAUSE OF ACTION**

19 **Representative Claim for PAGA Penalties**

20 **Under California Labor Code §§ 2698, 2699, *et seq.* for** 21 **Failure to Timely Pay Earned Wages in Violation of California** 22 **Labor Code §§ 201, 201.3, 202, 203, 204, 204b,** 23 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

24 (Against all Defendants)

25 83. Plaintiffs re-allege and incorporate by reference the foregoing allegations
26 as though set forth herein.

27 84. Pursuant to Labor Code § 201, "If an employer discharges an employee,
28 the wages earned and unpaid at the time of discharge are due and payable

1 immediately.”

2 85. Pursuant to Labor Code § 201.3, temporary employment agencies must
3 pay temporary employees weekly.

4 86. Pursuant to Labor Code § 202, “If an employee not having a written
5 contract for a definite period quits his or her employment, his or her wages shall
6 become due and payable not later than 72 hours thereafter, unless the employee has
7 given 72 hours previous notice of his or her intention to quit, in which case the
8 employee is entitled to his or her wages at the time of quitting.”

9 87. Labor Code § 203 provides, in pertinent part: “If an employer willfully
10 fails to pay, without abatement or reduction, ... any wages of an employee who is
11 discharged or who quits, the wages of the employee shall continue as a penalty from
12 the due date thereof at the same rate until paid or until an action therefore is
13 commenced; but the wages shall not continue for more than 30 days. ...”

14 88. Pursuant to Labor Code § 204, “all wages ... earned by any person in
15 any employment are due and payable twice during each calendar month, on days
16 designated in advance by the employer as the regular paydays.”

17 89. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
18 employee during any calendar week and prior to or on the regular payday shall be
19 paid for not later than the regular payday of the employer for such weekly-paid
20 employee falling during the following calendar week.”

21 90. Defendants did not properly pay Plaintiff and potentially other
22 Aggrieved Employees pursuant to the requirements of Labor Code §§ 201, 202, 204
23 and/or 204b and thereby Plaintiffs seek the remedies sought in this Complaint.

24 91. At all material times, Defendants and DOES 1 through 50 were and/or
25 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
26 Employees’ employer, within the meaning of California Labor Code § 558, and, as
27 such, are subject to penalties for each underpaid employee as set for in Labor Code §
28 558.

92. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of the foregoing Labor laws during the proposed PAGA Period.

93. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which Defendants violated Labor Code §§ 201, 202, 203, 204, 204b, and 256.

94. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs, damages, and other remedies pursuant to the PAGA in an amount to be proven at trial all in an amount to be shown according to proof at trial.

FOURTH CAUSE OF ACTION

Representative Claim for PAGA Penalties

Under California Labor Code §§ 2698, 2699, *et seq.* for

Failure to Comply with the Meal and Rest Break Requirements Under Labor

Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order

(Against all Defendants)

95. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

96. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of Labor Code §§ 226.7, 512, and 1198 during the proposed PAGA Period.

97. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

98. Wherefore, Plaintiffs request all remedies available to them and to the Aggrieved Employees pursuant to the PAGA all in an amount to be shown according to proof at trial.

FIFTH CAUSE OF ACTION

Representative Claim for PAGA Penalties

**Under California Labor Code §§ 2698, 2699, *et seq.* for
Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,
and the applicable IWC Wage Order**

(Against all Defendants)

99. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

100. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in pertinent part, that every employer shall, “semimonthly or at the time of each payment of wages, shall furnish to his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number..., (8) the name and address of the legal entity that is the employer. . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. . .” (Labor Code § 226 subdivision (a).)

101. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of Labor Code §§ 226, 226.3, 226.6, and 1198 during the proposed PAGA Period.

102. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

103. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein under §§ 226, 226.3, and 226.6 all in an amount to be shown according to proof at trial.

SIXTH CAUSE OF ACTION

Representative Claim for PAGA Penalties

For Failure to Maintain Required Records in Violation of California

Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198

(Against All Defendants)

104. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

105. Section 7 of the typical Wage Order requires every employer to maintain time and payroll records.

106. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of Labor Code § 1174 for failing to maintain certain records which employers are required to maintain, including but not limited to, an accurate record indicating the number hours worked by the Plaintiffs.

107. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period

1 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
2 pay period for each subsequent violation in which all culpable Defendants violated
3 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
4 of the applicable penalty is all in an amount to be shown according to proof at trial.

5 108. For the reasons alleged herein, Plaintiffs seek all available remedies
6 pursuant to the PAGA all in an amount to be shown according to proof at trial.

7 **SEVENTH CAUSE OF ACTION**

8 **Representative Claim for PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

10 **Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of**
11 **California Labor Code §§ 2802, 1198, and the Applicable Wage Order**

12 (Against all Defendants)

13 109. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 110. California Labor Code § 2802 requires employers to indemnify their
16 employees for expenses and losses incurred while discharging their duties or
17 obedience to the directions of their employer.

18 111. California Labor Code § 2804 prohibits waiver of this statutory right.

19 112. Plaintiffs seek to recover penalties pursuant to the PAGA from the
20 Defendants for any violations of Labor Code § 2802 for failing to reimburse
21 employees for work-related expenses.

22 113. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
23 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
24 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation in which all culpable Defendants violated
26 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
27 of the applicable penalty is all in an amount to be shown according to proof at trial.

28 114. For the reasons alleged herein, Plaintiffs seek all available remedies

1 pursuant to the PAGA all in an amount to be shown according to proof at trial.

2 **EIGHTH CAUSE OF ACTION**

3 **Representative Claim for Civil Penalties Under the PAGA for**
4 **Violations of Labor Code §§ 246 and 246(l) and**
5 **Municipal Paid Sick Leave Ordinances**

6 115. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 116. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,
9 employers in California must provide employees with paid sick leave to be paid at a
10 specified rate of pay which must factor in additional earnings during a given pay
11 period wherein such leave is used. *Wood v. Kaiser Foundation Hospitals*, 88 Cal.
12 App. 5th 742 (2023).

13 117. Plaintiffs are informed and believe and therefore allege that Defendants
14 did not pay sick leave to Aggrieved Employees in violation of California law.

15 118. Defendants have failed to (1) provide paid sick leave; (2) include
16 required information about paid sick leave in wage notices and/or wage statements,
17 including without limitation information on the amount of paid sick leave hours
18 accrued; (3) provide required information about paid sick leave to employees,
19 including without limitation at the time of hire; (4) at the time of hire, provide
20 employees with written notice of the employer's name, address, and telephone
21 number; (5) provide required information about paid sick leave in English, Spanish,
22 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
23 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage
24 statements, and therefore Defendants have violated one or more municipal sick leave
25 ordinances, including without limitation the sick leave ordinances of Berkeley,
26 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
27 Monica.

28 119. The PAGA imposes upon Defendants, and each of them, civil penalties

1 for violating Labor Code §§ 246 and 246(l).

2 120. Civil penalties under the PAGA are equitable in nature. *Nationwide*
3 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, 9 Cal. 5th 279 (2020).

4 121. At all material times, Defendants were and/or are Aggrieved Employees'
5 employers or persons acting on behalf of Aggrieved Employees' employer, within the
6 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
7 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
8 regulating hours and days of work in any Order of the Industrial Welfare Commission
9 and, as such, are subject to penalties for each underpaid employee as set for in Labor
10 Code § 558.

11 122. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
12 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
13 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
14 employee for subsequent violations for all Labor Code provisions for which a civil
15 penalty is not specifically provided.

16 123. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
17 applicable statute, Plaintiffs are seeking civil penalties against Defendants in an
18 amount to be shown according to proof.

19 124. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to
20 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
21 amount to be shown according to proof.

22 125. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
23 State of California and Aggrieved Employees seek to recover from Defendants, and
24 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
25 determined at trial.

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28

1 **NINTH CAUSE OF ACTION**

2 **Representative Claim for PAGA Penalties**

3 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

4 **Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6,**
5 **201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and**
6 **212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3,**
7 **230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section**
8 **232, subdivision (c) of Section 232.5, Sections 233, 234, 245-251, §§ 351-356, and**
9 **403, subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 511,**
10 **513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922,**
11 **923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198**
12 **via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5,**
13 **1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308,**
14 **1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,**
15 **subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,**
16 **1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,**
17 **1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,**
18 **2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,**
19 **6310, 6311, and 6399.7 and the Applicable Wage Order**

20 **(Against all Defendants)**

21 126. Plaintiffs re-allege and incorporate by reference the foregoing allegations
22 as though set forth herein.

23 127. This claim is premised on Plaintiffs' right to pursue all Labor Code
24 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
25 *USA, Inc.*, 23 Cal. App. 5th 745 (2018).

26 128. Plaintiffs have sent their written notice to the LWDA and Defendants of
27 the specific sections of the California Labor Code Defendants violated and continue
28 to violate.

1 129. Plaintiffs will file an amended complaint once they have exhausted their
2 administrative remedies and are entitled to pursue claims and remedies as authorized
3 by PAGA.

4 130. Pursuant to Labor Code § 2699, any provision of the Labor Code that
5 provides for a civil penalty to be assessed and collected by the LWDA or any of its
6 departments, divisions, commissions, boards, agencies or employees for violation of
7 the code may, as an alternative, be recovered through a civil action brought by an
8 aggrieved employee on behalf of himself or herself and other current or former
9 employees pursuant to the procedures specified in Labor Code § 2699.3.

10 131. Plaintiffs seek to recover penalties pursuant to the PAGA from the
11 Defendants for any violations of the foregoing Labor Codes.

12 132. Plaintiffs are “aggrieved employees” because Plaintiffs were employed
13 by the alleged violator and had one or more of the alleged violations committed
14 against Plaintiffs, and therefore are properly suited to represent the interests of other
15 current and former Represented Employees.

16 133. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
17 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 132a,
18 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and
19 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3,
20 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
21 subdivision (c) of Section 232.5, Sections 233, 234, 245-251, 351-356, and 403,
22 subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 511, 513,
23 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923,
24 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via
25 the applicable Wage Order, subdivision (b) of Section 1198.3, 1198.5, Sections
26 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,
27 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
28 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,

1 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,
2 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
3 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
4 6310, 6311, and 6399.7.

5 134. As to Labor Code §§ 96, 98.6, 132a, and 1102.5, *et seq.*, Plaintiff alleges
6 that Defendants discriminated and retaliated against the named Plaintiff because of
7 her workplace injury and Defendants' fear that Plaintiff would report Defendants to
8 governmental authorities.

9 135. As to Labor Code §§ 432, 226, and 1198.5, *et seq.*, Plaintiff alleges that
10 Defendants failed to timely provide her personnel file and payroll records.

11 136. Labor Code § 558 establishes a civil penalty as follows: Any employer
12 or other person acting on behalf of an employer who violates, or causes to be violated,
13 a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the "Hours and Days of Work"
15 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
16 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
17 which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages; and (3) wages
21 recovered pursuant to this section shall be paid to the affected employee.

22 137. Plaintiffs seek penalties for Defendants' conduct as alleged herein as
23 permitted by law for every Labor Code provision currently on the books, all statutes
24 of which are incorporated herein by reference as though set forth in full.

25 138. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
26 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other
27 current and former Represented Employees as alleged herein all in an amount to be
28 shown according to proof at trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 3 1. That Defendants be found liable to the Plaintiffs;
- 4 2. For all remedies available to the Plaintiffs under the applicable
- 5 provisions of the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.*
- 6 including an award of attorneys' fees, costs, interest, liquidated damages, damages,
- 7 penalties and waiting time penalties according to proof to the extent permitted by law;
- 8 3. For maximum civil penalties available under the Labor Code and
- 9 applicable Wage Order as described more particularly in this Complaint, including
- 10 but not limited to penalties pursuant to Labor Code § 558;
- 11 4. That Aggrieved Employees be awarded reasonable attorneys' fees where
- 12 available by law, including but not limited to pursuant to Labor Code §§ 2698, *et seq.*,
- 13 Code of Civil Procedure § 1021.5, and/or other applicable laws; and
- 14 5. For any other relief the Court may deem just, proper, and equitable.

15 Dated: June 23, 2024

16 Law Office of Thomas D.
17 Rutledge

18 By: Thomas D. Rutledge
19 /s/Thomas D. Rutledge
20 Attorney for Plaintiffs
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