

COPY

SUM-100

SUMMONS (ON FIRST AMENDED COMPLAINT)
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

APRIA HEALTHCARE LLC, a Delaware Limited Liability Company;
APRIA HEALTHCARE GROUP, INC., a Delaware Corporation; and
DOES 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Alvaro Quintero, an individual, on behalf of himself
and all others similarly situated,

FOR COURT USE ONLY
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 10 2021

Sherri R. Carter, Executive Office/Clerk

By: Maisha Pryor, Deputy
Maisha Pryor

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of Los Angeles
312 N. Spring Street
Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alejandro P. Gutierrez 107688 Hathaway Perrett Websters Powers Chrisman & Gutierrez APC
5450 Telegraph Road, Ste. 200 805-644-7111
Ventura, CA 93003

CASE NUMBER
(Número del Caso):
20STCV42367

DATE:
(Fecha) FEB 10 2021

SHERRI R. CARTER

Clerk, by
(Secretario)

Maisha Pryor

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



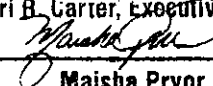
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Superior Court of California
County of Los Angeles

FEB 10 2021

Sherri B. Carter, Executive Office/Clerk

By:  Deputy
Maisha Pryor

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Attorneys for Plaintiff, ALVARO QUINTERO,
individually, and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES (UNLIMITED)

ALVARO QUINTERO, an individual, on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

APRIA HEALTHCARE LLC, a Delaware
Limited Liability Company; APRIA
HEALTHCARE GROUP, INC., a
Delaware Corporation; and DOES 1
through 20, inclusive,

Defendants.

) CLASS ACTION CASE #20STCV42367

)
) **FIRST AMENDED CLASS-ACTION**
) **COMPLAINT FOR:**

-) 1. Violation of California Labor Code
) §§510 and 1198 (Unpaid Overtime);
) 2. Violation of Labor Code §§ 1194,
) 1197, and 1197.1 (Unpaid Minimum
) Wages);
) 3. Violation of Labor Code §§ 201, 202
) and 203(Wages Not Timely Paid Upon
) Termination);
) 4. Violation of Labor Code §226.7
) (Unpaid Rest Break Premiums);
) 5. Violation of Labor Code § 226.7
) (Unpaid Meal Break Premiums);
) 6. Violation of Labor Code §§ 226(a)
) (Non-Compliant Wage Statements);
) 7. Violation of California Labor Code
) §§2800 and 2802(Unpaid Business
) Expenses);
) 8. Violation of The Unfair Competition
) Law Business & Professions Code
) §17200, *et seq.*; and
)
)

) 9. For Civil Penalties Under the Private
) Attorney Generals Act of 2004 (Labor
) Code § 2699 et seq.)

Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

INTRODUCTION

1. This is a class action brought pursuant to California Code of Civil Procedure section 382 on behalf of a group of drivers who were and are misclassified by Defendants as independent contractors.

2. Defendant APRIA HEALTHCARE GROUP, INC. is a privately held company owned by a group of investment limited partnerships managed by affiliates of BLACKSTONE (NYSE:BX). Through its APRIA HEALTHCARE LLC operating unit, APRIA provides home respiratory therapy, negative pressure wound therapy, home enteral nutrition therapy and support, and home medical equipment. APRIA advertises itself as one of the nation's largest and leading home healthcare companies. The APRIA Defendants are collectively referred to herein as "APRIA."

3. As noted on its website, Defendant APRIA has 25 branches in the State of California. Defendants operate a delivery system consisting of branch offices in California from as far south as San Diego to as far north as San Jose where, as relevant herein, Defendants deliver and pick up home medical equipment. While Defendants have drivers who it has treated as employees who are paid W-2 wages and are provided vehicles and phones for deliveries and pick-up services, Defendants also utilize other drivers to provide the delivery and pick up services, who performed the large part of the delivery and pick-up of medical equipment, which drivers Defendants have intentionally, but improperly and illegally, classified as independent contractors rather than employees.

1 4. As a direct result of Defendants' intentional misclassification of drivers as independent
2 contractors as opposed to employees, Defendants denied its drivers a number of wage and hour
3 protections provided by the California Labor Code and California Industrial Welfare Commission
4 ("IWC") Wage Orders, including overtime wages, minimum wages, meal and rest breaks, wage
5 statements, and reimbursement of work related expenses.

6 5. The reality of the independent contractor scheme utilized by Defendants is that Plaintiff
7 and the class members are, in fact, employees according to the law. As relevant herein, Defendants are
8 in the business of providing home medical equipment throughout the state of California, and Plaintiff
9 and the class members are Defendants' home medical equipment personnel. Plaintiff and the class
10 members' work, i.e. delivering and picking up home medical equipment, is not a distinct occupation
11 or an incidental or tangential part of Defendants' business operations, but rather such work is central
12 to Defendants' business. Defendants provide the vast majority of the tools, equipment and locations
13 where Plaintiff and the class members do and did their work, including but not limited to, the medical
14 equipment to be delivered, the delivery addresses, and order of deliveries, the documentation necessary
15 to show the deliveries made including the documents that support the input throughout the day
16 regarding changes to scheduled deliveries, etc. Plaintiff and class members must appear at Defendants'
17 home medical equipment distribution locations to pick up the home medical equipment to be delivered,
18 are provided with Route Sheets, which include the date, the branch location, the route number, the
19 "employee" driver's name and number, the homeowners' names, addresses and order of delivery, and
20 blank spaces for the driver to indicate starting miles, finishing miles and total miles driven in the day,
21 and start, end, and total hours worked (in military time). The Route Sheets also include an "Employee
22 Signature" line for the driver to sign. The Route Sheets also include the following language below the
23 Employee Signature line: "I acknowledge that by signing this form the miles submitted are accurate,
24 for business purposes, and conform to Apria's mileage reimbursement policies." On information and
25 belief, Plaintiff alleges that his and other class members' delivery duties were tracked via GPS by
26 Defendants the entire time they were working. Plaintiff and the class members are required by
27 Defendants to track hours worked and miles driven each day. Plaintiff and class members were not
28

1 free from the control and direction of the Defendants nor did they perform work which was outside
2 the usual course of business of the Defendants.

3 6. The job duties that Plaintiff and class members perform/performed for Defendants are
4 not those done by a specialist and require no special skill. Plaintiff is informed and believes that the
5 vast majority of drivers the Defendants hire as “independent contractors” work for Defendants on a
6 full-time, long-term basis. Defendants pay/paid drivers, albeit through a separate company, a daily
7 fixed rate, which was the only form of pay received by Plaintiff and the class members.

8 7. In order to create a façade that its drivers are independent contractors, Defendant uses
9 various middlemen to create a fictitious layer between its delivery operations and its drivers, but
10 Defendants at all times provides/provided all instructions to Plaintiff and the class members.

11 8. Defendants’ conduct constitutes an intentional and willful practice of misclassification
12 of employees. As a result of Defendants’ conduct, Plaintiff and the class members have been deprived
13 of overtime pay, minimum wages, meal and rest breaks, compliant wage statements, and business
14 expense reimbursements. Plaintiff, on behalf of himself and all other similarly situated persons, seeks
15 all available remedies as set forth below resulting from Defendants’ conduct.

16 **JURISDICTION AND VENUE**

17 9. This class action is within the court's jurisdiction under California Labor Code §§ 226,
18 226.7, 510, 512, and 1194, 1197 and 1194, IWC Wage Order 9-2001 and the California Unfair
19 Competition law (the “UCL”), Business and Professions Code § 17200, et seq.

20 10. Plaintiff is a citizen of California because his domicile is in California.

21 11. On information and belief, Defendant APRIA HEALTHCARE LLC is a Delaware
22 Limited Liability Company with its headquarters located in Lake Forest, California.

23 12. On information and belief, Defendant APRIA HEALTHCARE GROUP, INC. is a
24 Delaware corporation with its headquarters located in Lake Forest, California.

25 13. On information and belief, Plaintiff alleges that at all relevant times Defendants have
26 been the nation’s largest providers of home medical equipment, including walkers, wheel chairs,
27 hospital beds, and wound therapy devices, with over 300 branches nationwide, including
28 approximately 25 branches California. Defendants’ in-state activities are substantial, continuous and

1 systematic and gave rise to the liabilities sued upon herein. This court has jurisdiction over Defendants
2 because they conduct substantial business in California and have intentionally availed themselves of
3 the laws and markets of California through the operation of their business in California.

4 14. The monetary damages and restitution sought by Plaintiff and the class members exceed
5 the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.
6 Based upon information and investigation as of the filing date of this complaint, Plaintiff alleges that
7 the amount in controversy for himself and each class member, including claims for monetary damages,
8 restitution, penalties, injunctive relief, and pro rata share of attorney's fees, is less than seventy-five
9 thousand dollars (\$75,000) and that the aggregate amount in controversy for the proposed class action,
10 including monetary damages, restitution, penalties, injunctive relief, and attorney's fees, is less than
11 five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff reserves the right to seek a
12 larger amount based on new and different information and resulting from discovery and investigation.

13 **THE PARTIES**

14 **Plaintiff**

15 15. Plaintiff Quintero was, and is, a victim of Defendants' policies and/or practices
16 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to
17 him by California Labor Code §§ 201, 202, 203, 226, 226.7, 512, 516, 558, 1194, 1197, 1197.1, 2775
18 and 2802; California Business and Professions Code § 17200, *et seq.*, and IWC Wage Order 9-2001.
19 Plaintiff is a resident of Woodland Hills, California, in Los Angeles County.

20 **Defendants**

21 16. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
22 Defendant APRIA HEALTHCARE, LLC is a Delaware Limited Liability Company with its
23 headquarters in Forest Hills, California, and has at least 25 branch offices it operates in California.

24 17. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
25 Defendant APRIA HEALTHCARE GROUP, INC. is a Delaware Corporation with its headquarters in
26 Forest Hills, California.

27 18. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
28 Defendants APRIA and Does 1 through 20, were the owner(s), director(s), officer(s), or managing

1 agent(s) acting on behalf of employer APRIA, and who, in said respective capacities and positions, are
2 liable for the claims alleged herein pursuant to Labor Code § 558.1 in that they were and are an “other
3 person” acting on behalf of APRIA, who violated, or caused to be violated, certain Labor Code sections
4 stated herein.

5 19. Based on information and belief, Defendants had the authority to, directly or indirectly,
6 or through an agent or other person, employ or exercise control over Plaintiff’s and the class members
7 wages, hours, and working conditions.

8 20. Based on information and belief, Defendants had knowledge of the wage-and-hour
9 violations alleged herein and each Defendant had the power to prevent the violations from occurring.
10 Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants could have
11 but failed to prevent the violations from occurring.

12 21. At all relevant times, Defendants did, and still do, transact and conduct business in the
13 State of California, including, but not limited to, the County of Los Angeles and within the jurisdiction
14 of this Court.

15 22. At all times mentioned in the causes of action alleged herein, each Defendant was an
16 agent and/or employee of each other Defendant. In doing the things alleged in the causes of action
17 stated herein, each Defendant was acting within the course and scope of this agency or employment
18 and was acting with the consent, permission, and authorization of each of the remaining Defendants.
19 All actions of each defendant, as alleged in the causes of action stated herein, were ratified and
20 approved by every other defendant or its officers or managing agents.

21 23. Plaintiff does not know the true names and capacities of Defendants DOES 1 through
22 10, inclusive, and therefore sues them by these fictitious names. Plaintiff will amend this Complaint
23 to include their names and capacities once they are known. Plaintiff is informed and believes, and on
24 that basis alleges, that each of the Defendants designated as a DOE is legally responsible in some
25 manner for the occurrences alleged in this Complaint, and unlawfully caused the injuries and damages
26 to Plaintiff and the Class as alleged in this Complaint.

27 ///

28 ///

1 **CLASS ALLEGATIONS**

2 24. Plaintiff brings this action on his own behalf, as well as on behalf of all other persons
3 similarly situated, and thus seeks class certification pursuant to California Code of Civil Procedure
4 §382.

5 25. All claims alleged herein arise under California law for which Plaintiff seeks relief and
6 remedies authorized by California law.

7 26. Plaintiff's proposed class consists of and is defined as follows:

8 **All individuals who worked for Defendants in California as drivers and are/were**
9 **classified as independent contractors at any time during the period of four years**
10 **prior to the filing of the Complaint through the date of certification ("Class").**

11 27. Members of the Class are referred to in this Complaint as "class members."

12 28. Plaintiff reserves the right to redefine the class and to add subclasses as appropriate based
13 on further discovery and specific theories of liability.

14 29. There are common questions of law and fact as to class members that predominate over
15 questions affecting only individual members, including, but not limited to:

16 (a) Whether Defendants improperly classified Plaintiff and class members as
17 "independent contractors" rather than employees;

18 (b) Whether Defendants required Plaintiff and the class members to work over eight (8)
19 hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed
20 to pay legally mandated overtime compensation to Plaintiff and the class members;

21 (c) Whether Defendants deprived Plaintiff and class members of minimum wages;

22 (d) Whether Defendants deprived Plaintiff and class members of meal periods or required
23 Plaintiff and class members to work during meal periods without compensation;

24 (e) Whether Defendants deprived Plaintiff and class members of rest periods or required
25 Plaintiff and class members to work during rest periods without compensation;

26 (f) Whether Defendants complied with wage statement reporting as required by California
27 Labor Code section 226(a);
28

1 (g) Whether Defendants failed to reimburse Plaintiff and class members for necessary and
2 required business-related expenses and/or losses incurred by them in the performance of their
3 work;

4 (h) Whether Defendants failed to timely pay wages due to Plaintiff and class members
5 during their employment;

6 (i) Whether Defendants failed to timely pay wages due to Plaintiff and class members
7 upon their discharge;

8 (j) Whether Defendants' failure to pay wages, without abatement or reduction, in
9 accordance with the Labor Code, was willful or reckless;

10 (k) Whether Defendants engaged in unfair business practices in violation of California
11 Business & Professions Code sections 17200, *et seq.*; and,

12 (m) The appropriate amount of damages, restitution, or monetary penalties resulting from
13 Defendants' violations of California law.

14 30. There is a well-defined community of interest in the litigation and the class is readily
15 ascertainable.:

16 (a) Numerosity: The class members are so numerous that joinder of all members
17 would be unfeasible and impractical. The class members are unknown to Plaintiff at this time;
18 however, the class is estimated to be over fifty (50) and the identity of such members is readily
19 ascertainable by inspection of Defendants' employment records.

20 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
21 interests of each class member with whom he has a well-defined community of interest, and
22 Plaintiff's claims (or defenses, if any) are typical of the class members as demonstrated herein.

23 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
24 interests of each class member with whom he has a well-defined community of interest and
25 typicality of claims. Plaintiff acknowledges that he has an obligation to make known to the
26 Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys,
27 the proposed class counsel, are versed in the rules governing class action discovery,
28 certification, and settlement. Plaintiff has incurred and through the duration of this action, and

1 will continue to incur costs and attorneys' fees that have been, are and will continue to be
2 necessarily expended for the prosecution of this action for the benefit of the class members.

3 (d) Superiority: The nature of this action makes the use of the class action method of
4 adjudication superior to other methods. A class action will achieve economies of time, effort,
5 expense and use of the Court staff as compared to separate lawsuits, and will avoid inconsistent
6 outcomes because the same issues can be adjudicated in the same manner and at the same time
7 for all class members.

8 (e) Public Policy Considerations: Employers in California violate Labor laws every
9 day. Current employees are often afraid to assert their rights out of fear of reprisal. Former
10 employees are fearful of bringing actions because they fear that former employers might
11 adversely impact future employment through negative references. Class actions provide the
12 class members who are not named in the complaint with the anonymity that allows for
13 vindication of employment rights while maintaining privacy.

14 **GENERAL ALLEGATIONS**

15 31. Defendants operate a home medical equipment distribution. As relevant herein,
16 Defendants' main business is to deliver and pick up home medical equipment.

17 32. Defendants operate their home medical equipment delivery service using drivers who
18 need no special skills. As part of the independent contractor scheme, Defendants utilize third parties
19 to create the illusion of separation between Defendants and the drivers. Defendants pay drivers through
20 subcontractors utilizing a daily rate of pay. Defendants require each driver to track miles driven each
21 day, to identify themselves as employees pursuant to a "Route Sheet" and to list the start and finish
22 work times, and the total hours worked.

23 33. Defendants exercise pervasive and systematic control over scheduling, deliveries,
24 including the equipment being delivered, and the routes, including the sequence of deliveries,
25 effectively determining the drivers' shifts, working hours, and working conditions. For example,
26 Defendants assign drivers specific Route Sheets, which include the address for each delivery and the
27 sequence of the day's deliveries, and mandate deliveries throughout the day, which the drivers are not
28 permitted to alter. Defendants also maintain control over the fees charged to customers.

1 34. Plaintiff and the class members were and are forced to regularly work over eight (8)
2 hours a day and over forty (40) hours a week, as Defendants assign drivers specific routes which they
3 are responsible for serving which include a number of assigned daily deliveries. Because Plaintiff and
4 class members are often required to work over ten (10) hours a day to complete the daily deliveries,
5 they have no choice but to work over eight hours per day.

6 35. Defendants' misclassification of Plaintiff and the class members as independent
7 contractors is intentional, unjustified and unlawful. Under the "economic realities test" and the "ABC
8 test" set out in the California Supreme Court Case of *Dynamex Operations W. v. Superior Court* (2019)
9 4 Cal. 5th 903, and California Labor Code §2775, Plaintiff and the class members are Defendants'
10 employees. As a result of the misclassification, Defendants have violated numerous wage and hour
11 provisions, including but in no way limited to, failing to pay at least minimum wages for all hours
12 worked, failing to pay overtime wages for all overtime hours worked, failing to provide meal and rest
13 breaks, failing to reimburse for necessary and reasonable business related expenses, failing to provide
14 appropriate wage statements, and not paying all wages due during employment and upon termination
15 or resignation.

16 36. Pursuant to California Labor Code §§2775 and 3357, Plaintiff and other class members
17 are entitled to a presumption that they are in fact employees of Defendants.

18 37. Defendants employed Plaintiff as a driver from in or about December 2018 through in
19 or about June 2020, but knowingly and willfully misclassified him as an independent contractor and
20 on that basis committed the violations against him as set forth herein.

21 38. Defendants continue to employ drivers in various locations throughout California and
22 continue to misclassify the employees as independent contractors.

23 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that Plaintiff and class members were entitled to receive certain wages for overtime
25 compensation and that they were not receiving certain wages for overtime compensation because
26 Plaintiffs and class members provided Defendants with a records of total hours worked each day, and
27 the records showed overtime hours worked.

1 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
2 have known that Plaintiff and class members were entitled to receive all meal periods or payment of
3 one (1) additional hour of pay at Plaintiff's and the class members' regular rate of pay when they did
4 not receive a timely uninterrupted meal period, and that they did not receive all meal periods or
5 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when
6 they did not receive a timely uninterrupted meal period.

7 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
8 have known that Plaintiff and class members were entitled to receive all rest periods or payment of
9 one (1) additional hour of pay at Plaintiff's and the class members' regular rate of pay when they did
10 not receive a timely uninterrupted rest period, and that they did not receive all rest periods or payment
11 of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when they did
12 not receive a timely uninterrupted rest period.

13 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
14 have known that Plaintiff and class members were entitled to receive reimbursement for all business-
15 related expenses, including vehicle gas, maintenance and repairs, phone, and other necessary business
16 expenses, during the course of their employment and that they did not receive reimbursement of
17 business-related expenses Plaintiff and class members incurred.

18 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
19 have known that Plaintiff and class members were entitled to receive complete and accurate wage
20 statements in accordance with California Labor Code section 226(a). In violation of the California
21 Labor Code section 226(a), Plaintiff and class members were not provided with compliant wage
22 statements.

23 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that Plaintiff and class members were entitled to receive timely wages during their
25 employment. In violation of the California Labor Code, Plaintiff and class members did not receive
26 payment of all wages, including but in no way limited to, overtime wages and minimum wages.
27
28

1 45. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
2 have known that Plaintiff and class members were entitled to receive all wages upon termination or
3 resignation, including but in no way limited to, overtime wages and minimum wages.

4 **FIRST CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 510 and 1198-Unpaid Overtime Wages**

6 **(Against all Defendants)**

7 46. Plaintiff incorporates all preceding and subsequent paragraphs as though fully set forth
8 herein.

9 47. At at all relevant times, Plaintiff and the class members were employees of Defendants
10 covered by California Labor Code §§ 510 and 1198, and IWC Wage Order 9-2001

11 48. California Labor Code § 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
13 provides that the "... standard conditions of labor fixed by the commission shall be the ... standard
14 conditions of labor for employees. The employment of any employee... under conditions of labor
15 prohibited by the order is unlawful."

16 49. California Labor Code §1198 and IWC Wage Order 9-2001 provide that it is unlawful
17 to employ persons without compensating them at a rate of pay either time -and-one-half or two times
18 that person's regular rate of pay, depending on the number of overtime hours worked by the person on
19 a daily or weekly basis.

20 50. IWC Wage Order 9-2001 provides that Defendants are and were required to pay
21 Plaintiff and class members employed by Defendants, and working more than eight (8) hours in a day
22 or more than forty (40) hours in a week, at a rate of time-and-one-half regular rate of pay for all hours
23 worked in excess of eight (8) hours in a day or forty (40) hours in a week, and two (2) times the regular
24 rate of pay for all hours in excess of twelve (12) hours in a day.

25 51. California Labor Code §510 codifies the right to overtime compensation at one and one
26 half times the regular rate for hours worked in in excess of eight (8) hours in a day or forty (40) hours
27 in a week, and two (2) times the regular rate of pay for all hours in excess of twelve (12) hours in a
28 day or in excess of eight (8) hours on the seventh consecutive day.

1 52. At all relevant times, Plaintiff and the class members worked in excess of eight (8)
2 hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week.
3 Because Defendants misclassified Plaintiff and the class members as independent contractors,
4 Defendants did not pay any hourly rate to them. During the relevant time period, Defendants willfully
5 failed to pay Plaintiff and the class members overtime compensation as required by California law
6 and, therefore, violated California Labor Code sections 510 and 1198, as well as Wage Order 9-2001.

7 53. Pursuant to California Labor Code §1194, Plaintiff and the class members are entitled
8 to recover their unpaid overtime compensation, together with interest, costs and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1194, 1197**

11 **And 1197.1-Unpaid Minimum Wages**

12 **(Against all Defendants)**

13 54. Plaintiff incorporates all preceding and subsequent paragraphs as though fully set forth
14 herein.

15 55. At all relevant times, Plaintiff and the class members were employees of Defendants
16 covered by Labor Code §§ 1194, 1197 and 1197.1 which provided that the minimum wage for
17 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage
18 less than the minimum wage so fixed is unlawful. As describe hereinabove, Plaintiffs and the class
19 members were misclassified as independent contractors and were not paid an hourly wage. Plaintiff
20 and class members were not paid even a minimum wage for all hours worked as a result of being paid
21 a daily wage instead. Plaintiffs and the class members were not paid the minimum wage for off the
22 clock work , and the wages paid to them were not sufficient to compensate Plaintiff and the class
23 members for all hours they worked at a minimum wage rate on a cumulative basis. Defendants
24 regularly failed to pay at least minimum wages to Plaintiff and the class members for all hours they
25 worked in violation of California Labor Code §§1194, 1197 and 1197.1.

26 56. Because Defendants' failure to pay Plaintiff and the class members the minimum wages
27 minimum wage as required by Labor Code §§1194, 1197 and 1197.1, Plaintiff and the class members
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1 are entitled to recover the unpaid balance of their minimum wage compensation, together with interest,
2 costs and attorneys' fees.

3 57. Pursuant to Labor Code §1194.2, Plaintiff and the class members are entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

5 **THIRD CAUSE OF ACTION**

6 **Violation of Labor Code § 226.7-Unpaid Rest Period Premiums**

7 **(Against All Defendants)**

8 58. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
9 and subsequent paragraphs.

10 59. At all relevant times, Plaintiff and the class members were employees of Defendants,
11 covered by California Labor Code § 226.7 and IWC Wage Order 9-2001.

12 60. Labor Code § 226.7(b) provides that an employer shall not require an employee to work
13 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
14 regulation, standard, or order of the Industrial Welfare Commission . . .

15 61. Subdivision 12(A) of the IWC Wage Order 9-2001 provides in pertinent part that:
16 Every employer shall authorize and permit all employees to take rest periods, which
17 insofar as practicable shall be in the middle of each work period. The authorized rest
18 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
19 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
20 be authorized for employees whose total daily work time is less than three and one-half
21 (3½) hours. Authorized rest period time shall be counted as hours worked for which there
22 shall be no deduction from wages.

23 62. At all relevant times herein, Defendants failed to authorize and permit Plaintiff
24 and the class members to take compliant paid rest periods.

25 63. Labor Code § 226.7(c) provides that:

26 If an employer fails to provide an employee a meal or rest or recovery period in
27 accordance with a state law, including, but not limited to, an applicable statute or
28 applicable regulation, standard, or order of the Industrial Welfare Commission . . . the

1 employer shall pay the employee one additional hour of pay at the employee's regular
2 rate of compensation for each workday that the meal or rest or recovery period is not
3 provided.

4 64. Similarly, Subdivision 12(B) of IWC Wage Order 9-2001 provides that:

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

8 65. Defendants violated Labor Code § 226.7 and IWC Wage Order 9-2001 by failing to
9 compensate Plaintiff and the class members with one hour of pay at their regular rate of compensation
10 for each work day that a compliant rest period was not provided.

11 66. As a result of Defendants' unlawful conduct, Plaintiff and the class members have
12 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed
13 for unprovided rest periods at the lawful rate of pay.

14 67. Pursuant to Labor Code § 218, Plaintiff and the class members are entitled to recover the
15 full amount of their unpaid additional wages for non-compliant rest periods. Pursuant to Labor Code §
16 218.5, Plaintiff and the class members are entitled to recover their reasonable attorney's fees and costs
17 of suit. Pursuant to Labor Code § 218.6 and/or Civil Code § 3287(a), Plaintiff and the class members
18 are entitled to recover prejudgment interest on the additional wages owed for denied meal periods at the
19 lawful rate of pay.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of Labor Code §§ 226.7 and 512(a)-Unpaid Meal Period Premiums**

22 **(Against All Defendants)**

23 68. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
24 and subsequent paragraphs.

25 69. At all relevant times, Plaintiff and the class members were employees of Defendants,
26 covered by Labor Code §§226.7 and 512 and IWC Wage Order 9-2001.

27 70. Pursuant to Labor Code §§ 226.7 and 512, and IWC Wage Order 9-2001, Plaintiff and
28 the class members were entitled to a meal period of at least thirty (30) minutes for each workday that

1 they worked more than five (5) hours, and a second meal period of at least thirty (30) minutes for each
2 workday they worked more than ten (10) hours.

3 71. Defendants failed to provide Plaintiff and the class members meal periods in
4 accordance with Labor Code §§ 226.7 and 512, and IWC Wage Order 9-2001. As a result, in
5 accordance with Defendants' corporate policy and practice, Plaintiff and the class members therefore
6 forfeited meal periods without receiving premium pay under California law.

7 72. Labor Code § 226.7(c) provides that if an employer fails to provide an employee a meal
8 or rest or recovery period in accordance with a state law, including, but not limited to, an applicable
9 statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the employer
10 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
11 each workday that the meal or rest or recovery period is not provided.

12 73. IWC Wage Order 9-2001 provides that if an employer fails to provide an employee a
13 meal period in accordance with the applicable provisions of this order, the employer shall pay the
14 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
15 the meal period is not provided.

16 74. Defendants violated Labor Code §226.7 and IWC Wage Order 9-2001 by failing to
17 compensate Plaintiff and the class members for meal periods at the rate of one hour of pay at their
18 regular rate of compensation for each work day that the meal periods were not provided.

19 75. Plaintiff and the class members did not voluntarily or willfully waive their meal
20 periods.

21 76. As a result of Defendants' unlawful conduct, Plaintiff and the class members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional premium
23 wages at the lawful rate of pay for days when all required meal periods were not provided.

24 77. Pursuant to Labor Code § 218, Plaintiff and the class members are entitled to recover
25 the full amount of their unpaid additional wages for missed meal periods. Pursuant to Labor Code §
26 218.5, Plaintiff and the class members are entitled to recover their reasonable attorney's fees and costs
27 of suit. Pursuant to Labor Code § 218.6 and/or Civil Code § 3287(a), Plaintiff and the class members
28

1 are entitled to recover prejudgment interest on the additional wages owed for denied meal periods at
2 the lawful rate of pay.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of Labor Code §§ 201, 202, and 203- Wages Not Timely Paid Upon Termination**
5 **(Against all Defendants)**

6 78. Plaintiff incorporates by reference and re-alleges each and every one of the allegations
7 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

8 79. Labor Code § 201 provides, in relevant part, “If an employer discharges an employee,
9 the wages earned and unpaid at the time of discharge are due and payable immediately.” Lab. Code §
10 201(a). Defendants did not pay immediately all wages earned and unpaid upon employee termination.
11 Defendants have refused and continue to refuse to pay said wages.

12 80. Labor ode § 202 provides, in relevant part, “If an employee not having a contract for a
13 definite period quits his or her employment, his or her wages shall become due and payable not later
14 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
15 to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Lab. Code
16 § 202(a). Defendants did not pay immediately all wages earned and unpaid to Plaintiff and the Class
17 upon their resignation. Defendants have refused and continue to refuse to pay said wages.

18 81. Pursuant to Labor Code §203, Defendants have willfully failed to pay without
19 abatement or reduction, in accordance with Labor Code §§201 and 202, all wages of Plaintiff and the
20 Class members, as alleged herein. Plaintiff and the Class seek wages and waiting-time penalties
21 pursuant to Labor Code §203. These penalties consist of up to 30 days of pay for Plaintiff at their
22 regular rate of pay.

23 82. Plaintiff and the Class members have been available and ready to receive wages owed
24 to them.

25 83. Plaintiff and the Class members have never refused to receive any payment, nor have
26 they been absent from their place of residence.

84. Defendants' failure to pay wages due and owing Plaintiff and the Class, as indicated in prior paragraphs, was willful; Defendants have knowingly refused to pay any portion of the amount due and owing Plaintiff and the Class.

85. Pursuant to Labor Code §§218.5 and 1194, Plaintiff and these Sub-Class members request that the Court award reasonable attorney fees and costs incurred in this action. Plaintiff and these Sub-Class members further request all unpaid wages, waiting time penalties and interest.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(A)- NON-COMPLIANT WAGE STATEMENTS
(AGAINST ALL DEFENDANTS)

86. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

87. At all relevant times, Plaintiff and the class members were employees of Defendants covered by Labor Code § 226.

88. Pursuant to Labor Code § 226(a), Plaintiff and the class members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate, compliant, itemized statement showing gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period; the corresponding number of hours worked at each hourly rate by the employee; and detailed information separately itemizing the hours, and rates of compensation.

89. Defendants failed to provide Plaintiff and the class members accurate, compliant, itemized wage statements in accordance with Labor Code § 226(a). Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year preceding the filing of the Complaint in this action (the “Penalty Period”), Defendants maintained and continue to maintain a policy or practice of failing to pay minimum and overtime wages, failing to accurately record all hours actually worked, failing to pay meal break premium payments, failing to pay rest period premium payments to Plaintiff and the class members in California, and failing to itemize the applicable rates of compensation and hours. Defendants' practice resulted and continues to result in the issuance of ‘wage statements’ to class members that do not show the correct amount of gross wages earned, the correct amount of net wages earned, the correct number of hours worked, the correct hourly rates of pay in effect for each hour worked, and the correct deductions made thereto for taxing authority purposes.

90. Defendants' failure to provide Plaintiff and the class members with accurate, compliant, itemized wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the class members with accurate wage statements, but intentionally provided 'wage statements' that Defendants knew were not accurate or compliant.

91. As a result of Defendants' conduct, Plaintiff and the class members have suffered injury. The absence of accurate and complete information on their wage statements has prevented timely challenges to Defendants' unlawful pay practices, required discovery and mathematical computations to determine the amount of wages owed and number of hours actually worked, caused difficulty and expense in attempting to reconstruct time and pay records, and led to the submission of inaccurate information about wages and deductions to state and federal government agencies.

92. Pursuant to Labor Code § 226(e), Plaintiff and the class members are each entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each violation of Labor Code § 226 in a subsequent pay period during the Penalty Period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per employee.

93. Pursuant to Labor Code § 226(h), Plaintiff and the class members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide currently employed class members with inaccurate, deficient, non-compliant 'wage statements' in violation of Labor Code § 226(a) and currently employed class members have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants' compliance with Labor Code § 226(a).

94. Pursuant to Labor Code § 226(e), Plaintiff and the class members are entitled to recover the full amount of penalties due under Labor Code § 226(e), reasonable attorney's fees and costs of suit.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES IN VIOLATION OF LABOR CODE § 2802

(AGAINST ALL DEFENDANTS)

1 95. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
2 and subsequent paragraphs.

3 96. California Labor Code §2802 provides that California employees must be reimbursed
4 for their employment-related business expenses.

5 97. §2802 of the California Labor Code states in pertinent part that “[a]n employer shall
6 indemnify his or her employee for all necessary expenditures or losses incurred by employee in direct
7 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
8 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
9 them to be unlawful.”

10 98. Defendants violated, and are continuing to violate, §2802 by requiring Plaintiff and the
11 class members to incur costs and other expenses related to the performance of their job duties,
12 including but not limited to gasoline, insurance and maintenance, mileage and cell phones and cell
13 phone service, all without full reimbursement therefor. By this and similar acts, the Defendants have
14 violated §2802.

15 99. Plaintiff and the class members have incurred such reasonable and necessary business
16 expenses in order to perform his job as required by Defendants, and for the benefit of Defendants, but
17 were not fully reimbursed. Plaintiff and the class members have sustained damages and losses in the
18 amount of the expenses incurred by him as required by Defendants for the necessary discharge of his
19 duties.

20 100. California Labor Code §2802(2) provides that the employee may recover all reasonable
21 costs, including attorneys’ fees, for enforcing the employee’s rights under this section. Plaintiff and
22 the class members have incurred costs and attorneys’ fees and will continue to incur costs and
23 attorneys’ fees to enforce their rights under § 2802. Plaintiff and the class members are entitled to
24 recover their reasonable attorneys’ fees and costs in an exact amount to be proved at trial.

25 **EIGHTH CAUSE OF ACTION**

26 **VIOLATION OF THE UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS**

27 **CODE §17200, ET SEQ.**

28 **(AGAINST ALL DEFENDANTS)**

1 101. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
2 and subsequent paragraphs.

3 102. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et*
4 *seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair
5 business practices with the meaning of Bus. & Prof. Code §17200, *et seq.*

6 103. Defendants have conducted the following unlawful activities:

7 (a) violations of Labor Code § 1194, and IWC Wage Order, 9-2001, by failing to
8 compensate Plaintiff and the class members minimum wages and overtime wages;

9 (b) violations of Labor Code §§ 201, 202 and 203 by failing to compensation Plaintiff
10 and the class members for wages and penalties owed post-resignation and termination;

11 (c) violations of Labor Code § 226.7 and IWC Wage Order 9-2001 by failing authorize
12 and permit rest periods to Plaintiff and Class Members and by failing to provide one
13 hour of pay at Plaintiff's and the Classes' regular rates of compensation for each work
14 day that compliant rest periods were not provided;

15 (d) violations of Labor Code § 226, by failing to provide Plaintiff and the class members
16 with accurate and compliant payroll records;

17 (e) violations of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001 by failing
18 to provide Plaintiff and the Class with compliant meal periods and by failing to provide
19 one hour of pay at Plaintiff's and the Classes' regular rates of compensation for each
20 work day that compliant meal periods were not provided;

21 (f) violations of Labor Code § 558 for failing to timely pay Plaintiffs and the class
22 members all wages due and for violating the Labor Code section concerning working
23 hours; and,

24 (g) violations of Labor Code § 2802 for failing to reimburse Plaintiffs and the class
25 members all necessary and reasonable business expense incurred in performing their
26 work for Defendants.

27 104. Defendants' activities also constitute unfair practices in violation of Bus. & Prof. Code
28 §§ 17200, *et seq.*, because Defendants' practices violate the above noted laws, and/or violate an

1 established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous, and
2 substantially injurious to Plaintiff and the class members.

3 105. The identified violations of the Labor Code, IWC Wage Order, Regulations, laws, and
4 public policy constitute business practices because they were done repeatedly over time and in a
5 systematic manner to the detriment of Plaintiff and the class members.

6 106. Because of Defendants' violations of the Labor Code, IWC Wage Order, Regulations,
7 laws, and public policy, Plaintiff and the class members have suffered injury-in-fact and have lost
8 money or property because of Defendants' practices. This injury-in-fact and loss of money or property
9 consists of the lost wages and other restitutionary remedies provided by the Labor Code, Regulations,
10 IWC Wage Order, laws and public policy as detailed in this Complaint and other resulting harms.
11 Plaintiff and the class members are entitled to restitution, an injunction, declaratory, and other
12 equitable relief against such unlawful practices to prevent future damage for which there is no adequate
13 remedy at law.

14 107. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff
15 and the class members are entitled to equitable and injunctive relief, including full restitution of all
16 wages which have been unlawfully lost as a result of the business acts and practices described herein
17 and enjoining Defendants to cease and desist from engaging in the practices described herein for the
18 maximum time permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

19 108. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and
20 alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, they will
21 continue to violate the noted laws.

22 109. Plaintiff and the class members are also entitled to and hereby claim attorneys' fees and
23 costs, pursuant to the private attorney general theory doctrine (Code of Civil Procedure §1021.5), and
24 any other applicable provision for attorney fees and costs, based upon the violation of the underlying
25 public policies.

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For Civil Penalties Under the Private Attorneys General Act of 2004

(Labor Code § 2699 et seq.)

(Against All Defendants on Behalf of Plaintiff and the Class)

110. Plaintiff realleges and incorporates herein by reference each allegation in the preceding and subsequent paragraphs.

111. Plaintiff brings this cause of action against Defendants in his capacity as private attorney general (proxy or agent of the State of California), on behalf of himself and all other aggrieved employees, to recover civil penalties under the Private Attorneys General Act of 2004, which is codified in Labor Code § 2699 et seq. (herein “PAGA”), for Defendants’ violations of the Labor Code enumerated herein.

112. Plaintiff is informed, believes, and thereon alleges that at all times pertinent hereto Plaintiff and members of the Class were “aggrieved employees” of Defendants, as that phrase is statutorily defined pursuant to Labor Code §2699(c); in particular, Plaintiff and members of the Class were employed by the alleged violators (i.e., Defendants), and against whom one or more of the alleged violations was committed.

113. Plaintiff has complied with all procedural requirements of the PAGA.

114. In particular, on October 29, 2020, Plaintiff, on behalf of himself and all those similarly situated gave written notice by E-Filing and certified mail to the California Labor and Workforce Development Agency and Defendants of the specific provisions of the Labor Code alleged to have been violated by Defendants, including the facts and theories to support the alleged violations. On October 30, 2020, Plaintiff, on behalf of himself and all those similarly situated gave written notice by E-Filing and certified mail to the California Labor and Workforce Development Agency and Defendants of an amendment to supplement the October 29, 2020 letter (collectively, the letters of October 29 and 30, 2020 are referred to as the “Notice”).

115. A true and correct copy of aggrieved employees, Plaintiff's Notice to the California Labor and Workforce Development Agency and Defendants is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

1 116. Plaintiff is informed, believes, and thereon alleges that he is statutorily authorized to
2 commence a civil action against Defendants pursuant to the PAGA, including Labor Code §§2698,
3 2699, 2699.3 and 2699.5, as either the California Labor and Workforce Development has notified the
4 employer and Plaintiff by certified mail that it does not intend to investigate the alleged violation
5 within sixty-five (65) calendar days of the postmark date of their receipt of the Notice or at least sixty-
6 five (65) calendar days have elapsed from the postmark date of the Notice with the California Labor
7 and Workforce Development having not provided notification of any intention to investigate the
8 alleged violations.

9 117. Plaintiff is informed, believes, and thereon alleges that at all times pertinent hereto,
10 Labor Code §2699.3(a)(2)(C) provided, “Notwithstanding any other provision of law, a plaintiff may
11 as a matter of right amend an existing complaint to add a cause of action arising under this part at any
12 time within 60 days of the time periods specified in this part.”

13 118. Wage Order No. 9-2001, commonly known as Wage Order No. 9, provides that “Every
14 employer shall pay to each employee, on the established payday for the period, not less than the
15 applicable minimum wage for all hours worked in the payroll period, whether the remuneration is
16 measured by time, piece, commission, or otherwise.” (Cal. Code Regs., tit. 8, § 11090, subd. (4)(B).)
17 “Hours worked” is defined in subdivision 2(K) of the wage order as “the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is suffered
19 or permitted to work, whether or not required to do so.” (Cal. Code Regs., tit. 8, § 11090, subd. (2)(K).)
20 Thus, the obligation to pay minimum wages attaches to each and every separate hour worked during
21 the payroll period.

22 119. Labor Code § 1197 requires that employers may not pay less than the mandated minimum
23 wage. The Company violated § 1197 by not paying Plaintiffs and their similarly-situated coworkers at least
24 the minimum wage for all hours worked. The civil penalty for violations of § 1197 is enumerated in Labor
25 Code § 1197.1. Plaintiffs intend to seek said penalties against the Company on behalf of himself and all
26 other similarly-situated employees for violations of § 1197.

27 120. California Labor Code §510 codifies the right to overtime compensation at one and one
28 half times the regular rate for hours worked in excess of eight (8) hours in a day or forty (40) hours

1 in a week, and two (2) times the regular rate of pay for all hours in excess of twelve (12) hours in a
2 day or in excess of eight (8) hours on the seventh consecutive day.

3 121. With respect to rest break violations, §226.7 of the Labor Code provides that employers
4 cannot require employees to work during paid rest breaks mandated by an order of the Industrial
5 Welfare Commission. The IWC, in turn, has mandated in Section 12(a) of the Wage Orders, including
6 Wage Order 9-2001, that every employer shall authorize and permit all employees to take paid rest
7 periods at the rate of ten minutes per four hours worked in the middle of each work period. Defendants
8 knowingly and intentionally failed to authorize and permit Plaintiff and the class to take said paid rest
9 periods in compliance with applicable law.

10 122. Both Labor Code §226.7 and IWC Wage Order 9-2001 require that if an employer fails
11 to provide an employee a rest period in accordance with state law or order of the IWC, the employer
12 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
13 each workday that the rest period is not provided. Labor Code §226.7(c) states: "If an employer fails
14 to provide an employee a meal or rest or recovery period in accordance with state law, including, but
15 not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
16 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
17 Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's
18 regular rate of compensation for each workday that the meal or rest or recovery period is not provided."
19 This "regular rate" of compensation is not limited to Plaintiff's base rate of compensation. *Alvarado*
20 *v. Dart Container Corp. of Cal.*, (2018) 4 Cal.5th 542, 554, 562. Defendant failed to provide Plaintiff
21 and the class the additional hour of pay at their regular rate of pay. Because Defendants failed to
22 provide Labor Code § 226.2 compliant rest break payments, Defendants have violated Labor Code
23 §226.7.

24 123. With respect to meal break premium violations, Labor Code § 512 requires that an
25 employer may not employ any employee for a work period of more than five hours per day without
26 providing the employee with a meal period of not less than 30 minutes and for a work period of more
27 than 10 hours with a second meal period of not less than 30 minutes. Further, Labor Code § 226.7
28 mandates that if an employer fails to provide an employee with a compliant meal period, it shall pay

1 the employee one additional hour of pay at the employee's regular rate of compensation for each
2 workday that the meal period is not provided. This "regular rate" of compensation is not limited to
3 Plaintiff's base rate of compensation. *Alvarado, supra*, 4 Cal.5th 542, 554, 562.

4 124. During Plaintiff's employment, Defendants knowingly and intentionally failed to
5 provide compliance meal periods and to compensate Plaintiff and the Class for premium wages owed
6 for non-compliant meal breaks as set forth in Labor Code §226.7. Specifically, Defendants failed to
7 pay Plaintiff one additional hour of pay at his "regular rate" of compensation for each workday a
8 compliant meal break was not provided.

9 125. There is no civil penalty associated with violation of § 226.7, but Plaintiff intends to pursue
10 civil penalties on behalf of himself and all others similarly-situated under Labor Code § 2699, subd. (f).

11 126. Labor Code § 512 provides that no employer shall employ an employee for a work period
12 of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee
13 is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work
14 period of more than ten (10) hours per day without providing the employee with a second meal period of
15 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. It is alleged
16 herein that Plaintiff and other employees were not provided with all requisite meal periods as required
17 under the law. As it is alleged that the Company violated Labor Code § 512, Plaintiff will seek the civil
18 penalties available under Labor Code § 558.

19 127. With respect to Wage Statement violations, Labor Code §226, subdivision (a) requires
20 a California employer to include very specific information on an employee's paycheck stub. The
21 required information includes, among other things, gross wages earned, total hours worked, the
22 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
23 basis, and all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate by the employee.

25 128. Labor Code §226.3 sets forth civil penalties for violations of section 226, subdivision
26 (a) as follows:

27 (1) Two hundred fifty dollars (\$250) per employee per violation in an initial citation;
28

1 (2) One Thousand Dollars (\$1,000) per employee for each violation in a subsequent
2 citation.

3 129. These are penalties Plaintiff intends to seek against Defendants on behalf of himself
4 and all other similarly situated employees for violation of Labor Code § 226(a).

5 130. Further, Labor Code §558 provides for a civil penalty against employers who violate
6 Labor Code section provisions. The civil penalty is:

7 (1) For any initial violation, fifty dollars (\$50.00) for each underpaid employee for each
8 pay period for which the employee was underpaid in addition to an amount sufficient to recover
9 underpaid wages.

10 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
11 employee for each pay period for which the employee was underpaid in addition to the amount
12 sufficient to recover underpaid wages.

13 140. California Labor Code §2802 requires that an employer reimburse an employee for
14 business expenses incurred. Here, Apria did not reimburse Plaintiff and the aggrieved employees for
15 business mileage and related expenses as required by law.

16 141. Labor Code § 201 requires immediate payment of all wages owed at the termination of
17 employment. It is believed that within the last three (3) years, the Company's employees in California have
18 been terminated and have not received all wages owed at their termination. There is no civil penalty
19 associated with violation of § 201, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil
20 penalties on behalf of himself and all others similarly-situated under Labor Code § 2699, subd. (f).

21 142. Labor Code § 202 requires payment of all wages owed within 72 hours of the resignation
22 of an employee, unless the employee gives more than 72-hours notice, in which case wages are owed at the
23 employee's resignation. It is believed that within the last three (3) years, Company employees in California
24 have resigned and have not received all regular and premium pay owed in a timely fashion after their
25 resignation. There is no civil penalty associated with violation of § 202, but Plaintiff (and/or any later-
26 joined plaintiffs) intends to pursue civil penalties on behalf of themselves and all others similarly-situated
27 under Labor Code § 2699, subd. (f).

1 143. Labor Code § 203 establishes a statutory penalty for willful violations of Labor Code §§
2 201 or 202. There has been a willful violation of Labor Code § 201 and 202 because the Company cannot
3 hide behind its ignorance of the California's wage and hour laws. Further evidence of the Employer's
4 willful disregard for Labor Code §§ 201 and 202 is likely to be adduced at trial. Plaintiff (and/or any later-
5 joined plaintiffs) intends to pursue civil penalties on behalf of himself and all others similarly-situated
6 under Labor Code § 256.

7 144. Labor Code § 204 makes wages due no less frequently than twice a month for non-exempt
8 employees for work performed each pay period. The Company has violated § 204 with respect to
9 Plaintiffs' and their similarly-situated coworkers by not paying them all wages due for work performed
10 each pay period. Plaintiff intends to pursue civil penalties on behalf of himself and all other similarly-
11 situated under Labor Code § 210.

12 145. Labor Code § 210 establishes a civil penalty for violations of Labor Code § 204. Every
13 person who fails to pay the wages of each employee as provided in § 204 shall be subject to a civil
14 penalty as follows:

15 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
16 and

17 (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
18 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

19 146. As it is alleged that Apria violated Labor Code § 204, Plaintiff will, on behalf of the
20 Putative Class, seek the civil penalties available under Labor Code § 210.

21 147. Labor Code § 219 provides that an employer may not circumvent by way of private
22 agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that the Company
23 will argue that these employees were subject to any "agreement" to work off the clock, without proper first
24 or second meals, or without pay but instead for a "flat fee" or an agreement that overtime could be deducted
25 from commissions, the Company will have violated Labor Code § 219. There is no civil penalty associated
26 with violation of § 219, but Plaintiff intends to pursue civil penalties on behalf of himself and all others
27 similarly-situated under Labor Code § 2699, subd. (f).
28

148. The IWC Wage Orders also provide for a civil penalty to be assessed against an employer who violates their provisions. Section 20 thereof states, in relevant part:

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

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

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

149. Lastly, Labor Code § 2699 provides for a civil penalty for the violation of Labor Code sections that lack a civil penalty of their own. This civil penalty states, “If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

150. Plaintiff seeks these penalties against Defendants for violation of any civil-penalty-less Labor Code sections. Plaintiff will also seek, on behalf of himself and all other similarly-situated individuals, this additional civil penalty against Apria for its violation of the IWC Wage Order(s), § 3(A) and 4, as well as any additional violation of Wage Order 9-2001.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the putative Class prays for judgment as follows:

A. That the Court determine that this action may be maintained as a class action with the named Plaintiff appointed as Class representative;

B. For the attorneys appearing on the above caption to be named Class counsel;

C. For nominal, actual, exemplary, and compensatory damages, including lost wages, according to proof at trial;

D. For restitution of all monies, wages, expenses, and costs due to Plaintiff and the Class;

- 1 E. For waiting-time penalties under Labor Code § 203;
- 2 F. For a disgorgement of profits from the unlawful and unfair business practices in violation
- 3 of Bus. & Prof. Code §17200, *et seq.*;
- 4 G. For reasonable attorneys' fees, costs and expenses pursuant to Labor Code §§ 218.5,
- 5 226, 1194, Code of Civil Procedure §1021.5; ;
- 6 H. For pre-judgment and post-judgment interest to the extent allowable by law;
- 7 I. For all applicable penalties, whether civil or statutory, recoverable under Labor Code
- 8 §§ 226 and 558, and as otherwise authorized by statute or law.
- 9 J. For an injunction restraining Defendants from continuing to engage in unlawful and
- 10 unfair business practices in violation of Bus. & Prof. Code §17200, *et seq.*;
- 11 K. For civil penalties and related relief as provided for in California Labor Code §2699 et
- 12 seq.;
- 13 L. For any other appropriate declaratory relief; and
- 14 M. For all such other and further relief that the Court may deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff, individually, and on behalf of the class members, hereby demand a jury trial.

17 Date: February 8, 2021

18
19 **HATHAWAY, PERRETT, WEBSTER,**
20 **POWERS, CHRISMAN & GUTIERREZ, APC**

21 By



22 ALEJANDRO P. GUTIERREZ
23 Attorneys of Record for Plaintiff

24 **PALAY HEFELFINGER, APC**

25 By:



26 DANIEL J. PALAY
27 Attorneys of Record for Plaintiff

EXHIBIT A



1746 S. VICTORIA AVENUE
SUITE 230
VENTURA, CALIFORNIA 93003
PHONE: (805) 628-8220
FACSIMILE: (805) 765-8600

WRITER'S E-MAIL: DJP@CALEMPLOYMENTCOUNSEL.COM

October 30, 2020

Labor and Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

VIA FIRST CLASS MAIL;
ALSO VIA WEB PORTAL AT:
<https://dir.tfaforms.net/>

Daniel J. Starck, CEO
Apria Healthcare Group, Inc.
Apria Healthcare, LLC
26220 Enterprise Ct
Lake Forest CA 92630

VIA FIRST CLASS MAIL

Re: Quintero v. Apria Healthcare Group, Inc. – Amendment to 10/29/20 Notice
(LWDA Case No. LWDA-CM-811042-20)

To Whom It May Concern:

Please allow this letter amendment to supplement the October 29, 2020 letter (PAGA Notice Letter) previously served by counsel for Al Quintero ("Plaintiff") in the above-referenced matter. The PAGA Notice Letter is enclosed herewith.

We note that, at this time, the precise relationship between operative California business entities "Apria Healthcare Group, Inc." and "Apria Healthcare, LLC" is unknown to Plaintiff, and therefore in an abundance of caution, all references to "Apria" or the "Employer" or the "Company" that are made in the PAGA Notice Letter are intended to include both "Apria Healthcare Group, Inc." and "Apria Healthcare, LLC." The civil complaint shall also reference both entities, out of caution.

Very truly yours,

PALAY HEFELFINGER, APC

A handwritten signature in black ink, appearing to read "Daniel J. Palay", with a long horizontal flourish extending to the right.

Daniel J. Palay

DJP:bdh

Enclosure(s):

(1) PAGA Notice Letter dated 10-29-2020



1746 S. VICTORIA AVENUE
SUITE 230
VENTURA, CALIFORNIA 93003
PHONE: (805) 628-8220
FACSIMILE: (805) 765-8600

WRITER'S E-MAIL: DJP@CALEMPLOYMENTCOUNSEL.COM

October 29, 2020

Labor and Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

*VIA CERTIFIED MAIL;
ALSO VIA WEB PORTAL AT:
<https://dir.tfaforms.net/>*

Daniel J. Starck, CEO
Apria Healthcare Group, Inc.
26220 Enterprise Ct
Lake Forest CA 92630

VIA CERTIFIED MAIL

Re: Quintero v. Apria Healthcare Group, Inc. – Notice of Labor Code Private Attorneys
General Act Claims and Intent to Pursue Civil Action

To Whom It May Concern:

This office represents Al Quintero ("Plaintiff") in his claims for violations of California wage-and-hour statutes and regulations by Apria Healthcare Group, Inc. (herein, "Apria" or the "Employer"). Mr. Quintero intends to file a civil lawsuit on behalf of himself and all other similarly-situated individuals against Apria to recover wages and statutory penalties under California statutes and regulations.

Additionally, our client intends to seek recovery of all available civil penalties under the Private Attorneys General Act ("PAGA"). This correspondence is being sent, pursuant to the provisions of California Labor Code § 2699.3, in order to allow Plaintiff, on behalf of himself and all other similarly-situated individuals, to collect the civil penalties associated with the violations of the following statutes and regulations in his civil lawsuit against Apria.

BACKGROUND

These are the facts as we presently understand them, as matters pertain to Plaintiff and the putative and/or representative class of workers Plaintiff intends to represent – *i.e.*:

All current and former employees of Employer who have worked in California in the position of driver during the statutory period preceding the date of this letter or the initiation of litigation,

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whichever date is sooner, but were paid as independent contractors (herein, the “Drivers” or the “Putative Class”). These include all individuals who were identified on Route Sheets filled out by such individuals, but who were not paid as employees.

Pursuant to its own website, Apria is a business which sells and delivers healthcare equipment to its customers. It operates from multiple facilities in California. Plaintiff worked for the Company as a driver providing delivery service to the customers of Employer exclusively in Southern California. He filled out “Route Sheets” as required by Apria which identified him as an employee. He only performed delivery services in a van-type vehicle for Apria pursuant to the directions provided by Apria personnel. He was required to use his personal vehicle for such deliveries.

During his employment, Plaintiff was not paid for overtime, double-time, was not provided paid rest breaks, or meal periods. Further, he was not reimbursed for mileage/expenses as required by law. Defendant also failed to provide Plaintiff with accurate itemized wage statements as required by law.

THE LAW

The actions of the Employer, described above, violate California law in a number of ways.

A. Failure to Pay Minimum Wages and Overtime Wages.

California’s Wage Orders provide, in relevant part, that “Every employer shall pay to each employee, on the established payday for the period, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” (*E.g.* Wage Order 7-2001 or 9-2001, at § (4)(B)). “Hours worked” is defined in subdivision 2(H) of the wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (*Id.*, at § (2)(H)). Thus, the obligation to pay minimum wages attaches to each and every separate hour worked during the payroll period. California Labor Code section 1194 further codifies the minimum wage obligations of employers.

Under the California Labor Code, Plaintiff will be entitled to recover his reasonable attorneys’ fees and costs against the Company. Cal. Labor Code §§ 218.5, 2699(g). Statutory interest also is accruing on all of the unpaid wages at the rate of ten percent (10%) per year. Cal. Labor Code § 218.6.

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B. Rest Break Violations.

Section 226.7 of the Labor Code provides that employers cannot require employees to work during breaks mandated by an order of the Industrial Welfare Commission. The IWC, in turn, has mandated in Section 12(A) of the Wage Orders, that every employer shall authorize and permit all employees to take rest periods at the rate of ten minutes per four hours worked in the middle of each work period. All such rest periods must be separately compensated.

During Plaintiff's employment, Apria knowingly and intentionally failed to remit payment for rest periods as mandated by the IWC Wage Order(s).

Both Labor Code Section 226.7 and the IWC Wage Orders require that if an employer fails to provide an employee a rest period in accordance with a state law or order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Section 226.7's "regular rate" of compensation is not limited to Plaintiffs base rate of compensation, but includes other forms of qualifying compensation, such as their piece-rate pay. *Alvarado v. Dart Container Corp.*, 4 Cal. 5th 542, 554 (2018).

During Plaintiff's employment, Defendants failed to provide Plaintiff the additional hour of pay at his regular rate of pay as required under Labor Code §§ 226.7 and 512. Under the California Labor Code, Plaintiff will be entitled to recover his reasonable attorney's fees and costs against the Company. Cal. Labor Code §§ 218.5, 2699(g). Statutory interest also is accruing on all of the unpaid wages at the rate of ten percent (10%) per year. Cal. Labor Code § 218.6.

C. Meal Break Premium Violations.

Section 512 of the Labor Code requires that an employer may not employ any employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, and for a work period of more than 10 hours without a second meal period of not less than 30 minutes.

Section 226.7 of the Labor Code mandates that if an employer fails to provide an employee with a compliant meal period, it shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

During Plaintiff's employment, Defendants knowingly and intentionally failed to provide compliant meal periods. Further, Defendants failed to pay Plaintiff one additional hour of pay at his "regular rate" of compensation for each workday a compliant meal break was not provided.

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D. Wage Statement Violations.

Labor Code section 226, subdivision (a), requires a California employer to include very specific information on an employee's paycheck stub. The required information includes, among other things, accurate figures for the gross wages earned, total hours worked, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Defendants thus have violated Labor Code § 226 by failing to accurately report gross and net wages earned and total hours worked by Mr. Quintero. Because of the inaccurate wage statements, Mr. Quintero has been harmed because his wages owed were not properly calculated and Plaintiff could not promptly and easily determine from the wage statement alone the correct amount of wages owed to Plaintiff during each pay period.

E. Reimbursement of Business Expenses.

California Labor Code §2802 requires that an employer reimburse an employee for business expenses incurred. Here, Apria did not reimburse Plaintiff and the aggrieved employees for business mileage and related expenses as required by law.

F. Other Statutory Violations.

Apria has not paid Plaintiff or those individuals who have left its employment all wages due, as required pursuant to Labor Code §§ 201 and 202. Consequently, Apra owes them statutory penalties pursuant to Labor Code § 203. Plaintiff believes that there have been more than 80 employees in California who were subjected to the same illegal actions.

Plaintiff will seek wages and statutory penalties against Apria for these violations. Penalties sought arise from any and all claims for (i) alleged violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 219, 510, 512, 558, 1194, and 1198, including but not limited to, (i) failure to pay employees all minimum and/or overtime wages due to the misclassification of their employment; (ii) alleged violations of California Labor Code § 226, including, but not limited to, failure to provide accurate wage statements; (iii) alleged violations of California Labor Code §§ 201-203, including, but not limited to, failure to pay final wages timely, or pay penalties of untimely final wages; (iv) failure to pay all meal and rest period premiums owed, and at the proper rate; (v) alleged violation of California Business and Professions Code § 17200 *et seq.* based on underlying violations of the California Labor Code as identified herein at (i) through (v), and (vi) alleged violations of California Labor Code § 2698 *et seq.* based on derivative violations of the Labor Code, including but not limited to Labor Code §§ 201, 202, 203, 204, 219, 226, , 226.7, 510, 512, 558, 1194, 1194.2, 1194.3, 1197.1 and 1198; and the IWC Wage Orders.

PAGA CIVIL PENALTIES

1. Statutory and Regulatory Violations

Labor Code § 1194 provides that, notwithstanding any agreement to work for a lesser wage, “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code § 510 requires employers to pay nonexempt workers overtime premium wages when they work more than eight hours in one day or over forty hours in one week, and for the first eight hours worked on the seventh straight day of work in a single workweek. This statute also requires employers to pay nonexempt workers double-time premium wages when they work more than 12 hours in one workday and for all hours worked in excess of eight on the seventh straight day of work in one workweek.

In this matter, it is alleged that Apria intentionally denied the Putative Class wages that should have been paid and violated California *Labor Code* §§ 1194, 510, , and the applicable IWC Wage Order(s), all as set forth above.

Labor Code § 201 requires immediate payment of all wages owed at the termination of employment. It is believed that within the last year, Apria driver employees in California have been terminated and have not received their overtime or double-time wages owed at their termination.

Labor Code § 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72 hours’ notice, in which case wages are owed at the employee’s resignation. It is believed that within the last year, Apria driver employees in California have resigned and have not received their overtime or double-time wages owed in a timely fashion as required by Labor Code § 202.

Labor Code § 204 sets timetables for when wages are due each pay period. In effect, most wages earned during a pay period must be paid at the conclusion of that pay period or the conclusion of the next pay period (in the case of wages earned for labor in excess of the normal work period). Here, overtime wages were owed each pay period in which individuals worked overtime hours, and yet Apria did not timely pay them the earned overtime in the correct amounts.

Labor Code § 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that Apria has

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promulgated wage-and-hour policies that do not comply with California law, or that Apria will argue that Plaintiff and Putative Class members agreed to work overtime and/or double-time hours for a “flat fee” or daily rate, Apria will have violated Labor Code § 219.

Labor Code § 226, subdivision (a) requires employers to put specific, accurate information on their employees’ paycheck stubs. This information includes *inter alia* the actual number of hours worked and the applicable and lawful rates of pay. Apria failed to include necessary information on Plaintiff’s paycheck stubs by failing to pay the lawful rate of overtime and the correct total amounts of wages, and it is believed that the violation of Labor Code § 226, subdivision (a) extends to all other Putative Class members.

Labor Code § 226.7, sub§ (a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.” In the case at bar, Plaintiff and the putative class were deprived of compliant meal and rest periods, as discussed above.

Labor Code section 512 provides that no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer's duty with respect to meal breaks is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). However, Plaintiff and their fellow employees were not actually provided with all duty-free, uninterrupted 30-minute meal periods as the law requires. Thus, by not paying Plaintiff and the putative class for their meal periods, and by not providing them, Defendants have violated California law.

Labor Code § 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to receive in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit. To the extent that Apria will argue that the employees agreed to work overtime and/or double-time hours for some alternative fee (i.e. switching to a piece-rate), and failed to pay minimum wages to Plaintiff, Apria will have violated Labor Code § 1194(a).

Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful. To the extent the Apria

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made Plaintiffs work beyond the maximum hours of work and standard conditions fixed by the Labor Commission, and failed to remit lawful payment for those hours, Apria will have violated Labor Code § 1198.

California Labor Code §2802 requires that an employer reimburse an employee for business expenses incurred. Here, Apria did not reimburse Plaintiff and the aggrieved employees for business mileage and related expenses as required by law.

2. Civil Penalties Sought

Labor Code § 201 requires immediate payment of all wages owed at the termination of employment. It is believed that within the last three (3) years, the Company's employees in California have been terminated and have not received all wages owed at their termination. There is no civil penalty associated with violation of § 201, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of himself and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72-hours notice, in which case wages are owed at the employee's resignation. It is believed that within the last three (3) years, Company employees in California have resigned and have not received all regular and premium pay owed in a timely fashion after their resignation. There is no civil penalty associated with violation of § 202, but Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of themselves and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 203 establishes a statutory penalty for willful violations of Labor Code §§ 201 or 202. There has been a willful violation of Labor Code § 201 and 202 because the Company cannot hide behind its ignorance of the California's wage and hour laws. Further evidence of the Employer's willful disregard for Labor Code §§ 201 and 202 is likely to be adduced at trial. Plaintiff (and/or any later-joined plaintiffs) intends to pursue civil penalties on behalf of himself and all others similarly-situated under Labor Code § 256.

Labor Code § 204 makes wages due no less frequently than twice a month for non-exempt employees for work performed each pay period. The Company has violated § 204 with respect to Plaintiffs' and their similarly-situated coworkers by not paying them all wages due for work performed each pay period. Plaintiff intends to pursue civil penalties on behalf of himself and all other similarly-situated under Labor Code § 210.

Labor Code § 210 establishes a civil penalty for violations of Labor Code § 204. Every person who fails to pay the wages of each employee as provided in § 204 shall be subject to a civil penalty as follows:

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- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As it is alleged that Apria violated Labor Code § 204, Plaintiff will, on behalf of the Putative Class, seek the civil penalties available under Labor Code § 210.

Labor Code § 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that the Company will argue that these employees were subject to any “agreement” to work off the clock, without proper first or second meals, or without pay but instead for a “flat fee” or an agreement that overtime could be deducted from commissions, the Company will have violated Labor Code § 219. There is no civil penalty associated with violation of § 219, but Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 226 subdivision (a), requires a California employer to include very specific information on an employee’s paycheck stub. The required information includes the proper number of regular and overtime hours worked and the correct rates of pay. Lab. Code § 226(a). Subdivision (e) sets forth statutory penalties for the violation of § 226(a). Plaintiffs intend to bring suit to recover said penalties on behalf of themselves and all others similarly-situated.

Labor Code § 226.3 sets forth civil penalties for violation of § 226, subdivision (a). Plaintiff intends to seek said penalties against Defendants on behalf of themselves and all other similarly-situated employees for violation of § 226, subdivision (a).

Labor Code § 226.7, subd. (a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.” There is no civil penalty associated with violation of § 226.7, but Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly-situated under Labor Code § 2699, subd. (f).

Labor Code § 512 provides that no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. It is alleged herein that Plaintiff and other employees were not provided

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with all requisite meal periods as required under the law. As it is alleged that the Company violated Labor Code § 512, Plaintiff will seek the civil penalties available under Labor Code § 558.

Labor Code § 1197 requires that employers may not pay less than the mandated minimum wage. The Company violated § 1197 by not paying Plaintiffs and their similarly-situated coworkers at least the minimum wage for all hours worked. The civil penalty for violations of § 1197 is enumerated in Labor Code § 1197.1. Plaintiffs intend to seek said penalties against the Company on behalf of himself and all other similarly-situated employees for violations of § 1197.

California Labor Code §2802 requires that an employer reimburse an employee for business expenses incurred. Here, Apria did not reimburse Plaintiff and the aggrieved employees for business mileage and related expenses as required by law.

Finally, as noted in the case of *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112 (2012), the PAGA civil penalty under Labor Code § 558 includes, “[f]or each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” See *Thurman v. Bayshore Transit Mgmt., Inc.*, *supra*. Pursuant to § 558, Plaintiffs seek civil penalties equal to the amount of underpaid wages to all aggrieved employees in this matter.

Labor Code § 2699 provides for a civil penalty for the violation of Labor Code §s that lack a civil penalty provision of their own. The civil penalty is as follows: “If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Plaintiffs allege that Apria has potentially violated the following civil-penalty-less Labor Code §s: 201, 202, and 203.

The IWC Wage Orders also provide for a civil penalty to be assessed against an employer who violates their provisions. Section 20 thereof states, in relevant part:

- (A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:
 - (1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
 - (2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

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Plaintiff will seek, on behalf of himself and all other similarly-situated individuals, this additional civil penalty against Apria for its violation of the IWC Wage Order(s), § 3(A) and 4, as well as any additional violation of said Wage Order(s).

Reservation of right to pursue additional civil penalties: Plaintiffs intend to pursue the aforementioned civil penalties for these specific violations of law. However, should any other civil penalties be available by virtue of the Company's unlawful practices as enumerated herein, or as discovery reveals, Plaintiffs reserve the right to pursue such additional civil penalties.

CONCLUSION

Pursuant to California Labor Code § 2699.5, a violation of the above-cited statutes and regulations may form the basis for a PAGA action against Apria. However, as required by law, aggrieved employees like Mr. Quintero must first give the Labor and Workplace Development Agency the opportunity to pursue the offending employer before bringing their own PAGA action to collect civil penalties associated with the violation of the above-cited statutes and regulations.

In addition, pursuant to this letter and the enclosures, Mr. Quintero is complying with the updated requirements for PAGA claims; specifically, this claim notice letter will also be filed online, with copies sent by certified mail to the employer. Enclosed is a filing fee of \$75, as required by the amended statute.

Please let me know if your agency intends to investigate the matter. If not, Mr. Quintero intends to pursue his PAGA claims in a civil action, pursuant to law.

Very truly yours,

PALAY HEFELFINGER, APC



Daniel J. Palay

DJP:bdh

Enclosure(s):

(1) Filing fee payment