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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**06/22/2020** at 01:47:00 PM  
Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

6 Attorney for Plaintiffs  
7 [Additional counsel listed on next page]

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10 SARAH EGAN and JOSE ORTIZ, )  
11 individually, and on behalf of themselves )  
12 and others similarly situated, )

13 Plaintiffs, )

14 vs. )

15 )  
16 PREMIER HEALTHCARE SERVICES, )  
17 LLC, a California limited liability )  
18 corporation; AVEANNA )  
19 HEALTHCARE AS, LLC, a Delaware )  
20 limited liability corporation; and DOES )  
21 1 through 50 inclusive )

22 Defendants. )

Case No.: 37-2019-00020223-CU-OE-CTL

**PLAINTIFFS' SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT FOR:**

- 1. **PAGA Claim for Failure to Pay State Minimum/Regular Wages;**
- 2. **PAGA Claim for Failure to Pay State Overtime Wages;**
- 3. **PAGA Claim for Failure to Timely Pay Wages;**
- 4. **PAGA Claim for Meal and Rest Break Labor Code Violations;**
- 5. **PAGA Claim for Inaccurate Wage Statements;**
- 6. **PAGA Claim for Failure to Maintain Payroll Records;**
- 7. **PAGA Claim for Failure to Reimburse Business Expenses in Violation of Labor Code § 2802; and**
- 8. **PAGA Claim for Failure to Comply with California Sick Pay Laws.**

Date Complaint Filed: 04/18/2019  
Trial Date: NA  
Discovery Cutoff: NA

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1 Plaintiffs EGAN and ORTIZ, on behalf of themselves and acting for the  
2 interests of other current and former employees (cumulatively “Plaintiffs” or  
3 “Aggrieved Employees”), allege the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to Labor Code Private Attorney General Act (“PAGA”), §§  
6 2698, 2699 of the California Labor Code, Plaintiffs bring this representative action  
7 against Defendants for violations of the California Labor Code and the Industrial  
8 Welfare Commission Wage Orders (the “IWC Wage Orders”).

9 2. Plaintiffs bring this action seeking only PAGA civil penalties (no wages  
10 and no individualized relief), reasonable attorneys’ fees, and costs within the meaning  
11 of *Esparza v. KS Indus., L.P.* (2017) 13 Cal.App.5th 1228.

12 **JURISDICTION AND VENUE**

13 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter  
14 jurisdiction is proper in the Superior Court of California, County of San Diego, State  
15 of California because Plaintiffs allege claims arising under California law.

16 4. This Court has jurisdiction over the Defendants because each is an  
17 association, corporation, business entity, or individual that conducts substantial  
18 business in the State of California, County of San Diego.

19 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is  
20 proper in the Superior Court of California for the County of San Diego because this is  
21 where Defendants’ headquarters are located and from where the wrongful misconduct  
22 alleged in this Complaint originated.

23 **THE PARTIES**

24 6. Plaintiff SARAH EGAN is an individual that resides in San Diego  
25 County, California.

26 7. Plaintiff JOSE ORTIZ is an individual that resides in San Diego County,  
27 California.

28 8. Defendant PREMIER HEALTHCARE SERVICES, LLC (“PREMIER”)

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1 is a California limited liability company doing business in the County of San Diego,  
2 California.

3 9. Defendant AVEANNA HEALTHCARE AS, LLC (“AVEANNA”) is a  
4 Delaware limited liability company doing business in the County of San Diego,  
5 California, which upon information and belief, purchased PREMIER.

6 10. PREMIER, AVEANNA and DOES 1 through 50 are collectively  
7 referred to herein as “Defendant” or “Defendants.”

8 11. The true names and capacities, whether individual, corporate, associate,  
9 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to  
10 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious  
11 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will  
12 seek leave to amend this Complaint to allege the true names and capacities of DOES  
13 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and  
14 believe, and based thereon allege, that each of the DOE Defendants is in some manner  
15 liable to Plaintiffs for the events and actions alleged herein. All named Defendants  
16 and DOES 1 through 50 are collectively referred to as “Defendants.”

17 12. Plaintiffs are informed and believe, and based thereon allege, that at all  
18 times relevant herein each Defendant was acting as an agent, joint venture, or as an  
19 integrated enterprise and/or alter ego for each of the other Defendants, and each was a  
20 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so  
21 that each is responsible for the acts of the other in connection with the conspiracy and  
22 in proximate connection with the other Defendants.

23 13. Plaintiffs are informed and believe, and based thereon allege, that each  
24 Defendant was acting partly within and partly without the scope and course of their  
25 employment, and was acting with the knowledge, permission, consent, and  
26 ratification of every other Defendant.

27 14. Plaintiffs are informed and believe, and based thereon allege, that each of  
28 the Defendants was an agent, managing general partner, managing member, owner,

1 co-owner, partner, employee, and/or representative of each of the Defendants, and  
2 were at all times material hereto, acting within the purpose and scope of such agency,  
3 employment, contract and/or representation, and that each of them are jointly and  
4 severally liable to Plaintiffs and the Aggrieved Employees for the acts alleged herein

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

9 16. Plaintiffs are informed and believe, and based thereon allege, that each of  
10 the named Defendants are part of an integrated enterprise and have acted or currently  
11 act as the employer and/or joint employer of Plaintiffs and Aggrieved Employees,  
12 making each of them liable for the wage and hour violations alleged herein.

### 13 **GENERAL ALLEGATIONS**

14 17. Defendants are healthcare/medical staffing agencies providing labor and  
15 services as an employer or joint-employer throughout the State of California.

16 18. From about December 28, 2014 to January 30, 2019, Defendants  
17 employed Plaintiff EGAN on an hourly basis as a non-exempt Licensed Vocational  
18 Nurse (“LVN”) at Defendants’ customers’ homes in San Diego County, California.

19 19. From about March 12, 2018 to September 21, 2018, Defendants  
20 employed Plaintiff ORTIZ as a Service Coordinator who worked in Defendants’  
21 office essentially performing administrative work.

22 20. Defendants paid Plaintiffs and Aggrieved Employees on an hourly basis  
23 and considered them non-exempt.

### 24 **Unpaid Overtime Wages**

25 21. Within the last year before the filing of this action and continuing to the  
26 present, and pursuant to company policy and/or practice and/or direction, based on the  
27 policies implemented and enforced by Defendants, Defendants regularly and  
28 systematically, as a policy and practice, underpaid Plaintiffs and similarly situated

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1 employees' overtime.

2           22. As to Plaintiff EGAN and similarly situated Aggrieved Employees, this  
3 claim is premised, in part, on Defendants' employee handbook, which provides at  
4 page 11, "You are expected to arrive 10 minutes prior to your scheduled shift and  
5 ready to service your patient at your scheduled time[.]" yet management prohibits  
6 similarly situated Aggrieved Employees from reporting this time on their timesheets  
7 as hours worked, thus resulting in an underpayment of overtime in an amount to be  
8 determined at trial for each instance that such workers reported to work early without  
9 pay pursuant to this policy.

10           23. This claim is also premised, in part, on Plaintiff EGAN's allegations of  
11 the following schedule Defendants gave her from about April 2018 to July 2018:

- 12           • Sunday: Off
- 13           • Monday: 1900 - 0700
- 14           • Tuesday: 1900 - 0700
- 15           • Wednesday: 1900 - 0700
- 16           • Thursday: 1900 - 0700
- 17           • Friday: 2300 - 0700
- 18           • Saturday: 1900 - 0700

19           24. Plaintiff EGAN similarly maintains Defendant issued her the following  
20 schedule from about August 2018 - October 2018 as follows:

- 21           • Sunday: 2100 - 0900
- 22           • Monday: Off
- 23           • Tuesday: 2100 - 0900
- 24           • Wednesday: 2100 - 0900
- 25           • Thursday: 2100 - 0900
- 26           • Friday: 2300 - 0700
- 27           • Saturday: 2100 - 0900

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1           25. Plaintiff EGAN maintains Defendant failed to pay her anything even  
2 remotely consistent with the above schedule and, instead, Defendant underpaid her in  
3 an amount to be determined at trial.

4           26. As to Plaintiff ORTIZ, this claim is premised, in part, on Defendants'  
5 policy and/or practice and/or direction of requiring Plaintiff ORTIZ and similarly  
6 situated Aggrieved Employees to work off-the-clock hours from home drafting emails  
7 and answering work-related telephone calls and text messages using their personal  
8 phones and/or computers.

9           27. Additionally, Plaintiffs allege that Defendants have knowingly failed  
10 and, for current employees, continue to fail to properly compensate Plaintiff ORTIZ  
11 and similarly situated Aggrieved Employees for all overtime wages earned and due at  
12 the lawful overtime rate.

13           28. Plaintiffs allege that Defendants paid overtime based on one-and-one-  
14 half and double the straight time hourly rate for nonexempt employees, rather than on  
15 his or her legal regular rate of pay.

16           29. Specifically, Defendants' overtime payments to Plaintiff ORTIZ and  
17 similarly situated Aggrieved Employees did not include all forms of remuneration,  
18 including, but not limited to the "Quarterly Bonus" of \$1,500 that Defendants paid  
19 Plaintiff and other Aggrieved Employees on July 20, 2018.

20           30. Pursuant to § 49.1.1 of the California Division of Labor Standards and  
21 Enforcement Policies and Interpretations Manual, "In California, as with the federal  
22 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay  
23 includes many different kinds of remuneration, for example: hourly earnings, salary,  
24 piecework earnings, commissions, *certain bonuses*, and the value of meals and  
25 lodging." (Emphasis added.)

26           31. Plaintiffs and Aggrieved Employees earned such remuneration, including  
27 the Quarterly Bonus, for meeting performance standards in previous pay periods, but  
28 such remuneration was not included in their regular rate of pay for purposes of

1 overtime compensation during the relevant pay periods.

2 32. These are a few of many similar instances where Defendants failed to  
3 pay all wages owed to the Plaintiffs and the Aggrieved Employees.

4 **Unpaid Minimum/Regular Wages**

5 33. Within the last year before the filing of this action and continuing to the  
6 present, and pursuant to company policy and/or practice and/or direction, Defendants,  
7 based on the policies implemented and enforced by Defendants, failed to pay  
8 Plaintiffs and Aggrieved Employees all their regular/minimum wages, in an amount  
9 to be proven at trial.

10 34. The basis for Plaintiffs' and Aggrieved Employees' unpaid minimum  
11 wage/regular wage claim is based on, among other things, the above alleged policies  
12 implemented by Defendants, such as Defendants' requirement that Plaintiffs and  
13 similarly situated Aggrieved Employees to report early ten minutes each day, but who  
14 were instructed to never report such time on their timesheets, Defendants'  
15 requirement that Plaintiffs and similarly situated Aggrieved Employees work from  
16 home performing off-the-clock work, among other things.

17 35. Further, upon information and belief, Plaintiffs allege Defendants failed  
18 to pay minimum wage to employees who worked in localities where there was a  
19 minimum wage ordinance requiring a higher rate of pay than state minimum wage.

20 **Meal and Rests Break Claims**

21 36. Within the last year before the filing of this action, and pursuant to  
22 company policy and/or practice and/or direction, Plaintiffs are informed and believe  
23 and therefore allege that Defendants, based on the policies implemented and enforced  
24 by Defendants, failed to permit Plaintiffs and Aggrieved Employees to take all of  
25 their compliant off-duty meal and rest breaks during the required timeframe as  
26 required by law and failed to pay them premium pay in lieu thereof, in an amount to  
27 be proven at trial.

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1           37. The basis for Plaintiffs’ and Aggrieved Employees’ meal break claim is  
2 based, in part, on a policy implemented by Defendants that required Plaintiffs and  
3 Aggrieved Employees to always remain in the premises where the patients were  
4 located or otherwise remain on site to perform required job functions.

5           38. Many times, in an amount to be proven at trial, Plaintiffs are informed  
6 and believe and therefore allege that in cases where Plaintiffs and Aggrieved  
7 Employees worked more than five and/or ten hours in a workday, they were deprived  
8 of their right to take an uninterrupted meal break and Defendants failed to pay them  
9 premium pay for their missed or noncompliant meal breaks.

10           39. Plaintiffs’ meal break claims are also premised, in part, on an unlawful  
11 on-duty meal break agreement with a meal waiver agreement because the agreement,  
12 among other things, unlawfully assumes the *nature of the work* prevents an employee  
13 from being relieved of all duty, when Plaintiffs maintain it does not, particularly since  
14 the employer can provide a relief worker to allow Aggrieved Employees to enjoy an  
15 uninterrupted meal. The agreement also misstates the law as to what meal rights  
16 Plaintiffs otherwise could enjoy (e.g., agreement erroneously states employees are  
17 “entitled to a meal period of not less than thirty (30) minutes if the Employee works  
18 for more than ten (10) hours in a work day, and to a second meal period of not less  
19 than thirty (30) minutes if the employee works for more than eight (8) hours in a work  
20 day” when California law provides an employee the right to their first meal break  
21 once they work over five hours and a second meal break once they work more than  
22 ten hours).

23           40. Plaintiffs’ rest break claim is premised on Defendants’ policy that  
24 required Plaintiff and Aggrieved Employees to work alone or under circumstances  
25 where taking a meal and rest break was impracticable because of their patients’  
26 healthcare needs and Defendants’ policies that required their workers to never leave  
27 their patients unattended and the Defendants’ unwillingness to assign a relief  
28 employee to relieve them.

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1           41. Because of Defendants' policy, Defendants prevented Plaintiffs and  
2 Aggrieved Employees from taking all their uninterrupted rest breaks to which they  
3 had the right to enjoy in an amount to be proven at trial, and Defendants failed to pay  
4 them premium pay as required under California law. (*See Augustus v. ABM Security*  
5 *Services* (2016) 2 Cal.5th 257.)

6 **Unreimbursed Work-Related Expense Claims**

7           42. During all times relevant, and pursuant to company policy and/or  
8 practice and/or direction, Defendants required Plaintiffs and, upon information and  
9 belief, Aggrieved Employees to use their personal cell phones and incur various other  
10 expenses associated with their work for Defendants.

11           43. Plaintiffs allege that Defendants, via its managers, typically called,  
12 texted, and emailed Plaintiffs and the Aggrieved Employees during working hours on  
13 their personal cell phones.

14           44. Plaintiff EGAN and similarly situated Aggrieved Employees worked at  
15 patient's homes, most often alone, where they had no access to work phones, other  
16 than their personal cell phones.

17           45. Plaintiff ORTIZ and similarly situated Aggrieved Employees worked  
18 from home using their own tools and equipment.

19           46. Plaintiffs and similarly affected Aggrieved Employees disavow any  
20 knowledge of written policies allowing them to request reimbursement for such work-  
21 related expenses and, as a result, never were paid for said expenses.

22           47. Plaintiffs are informed and believe, and thereupon allege, that  
23 Defendants' requirement for employees to use their supplies and equipment to  
24 perform their work duties without reimbursement was an attempt to defray the costs  
25 onto its employees.

26           48. Defendants passed the cost of doing business onto its employees by  
27 requiring, without reimbursement, their employees to purchase equipment, tools, and  
28 services necessary to perform work for Defendants.

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1 **Erroneous Wage Statements in Violation of Labor Code § 226**

2 49. During all times relevant, and pursuant to company policy and/or  
3 practice and/or direction and continuing to the present, and pursuant to company  
4 policy and/or practice and/or direction, Defendants issued confusing and inaccurate  
5 wage and earning statements to Plaintiffs, which wage and earning statements failed  
6 to identify their correct rates of pay and/or correct gross and net earnings during the  
7 applicable pay period.

8 50. During the April 8, 2018 to April 14, 2018 pay period, for example,  
9 Defendant PREMIER issued Plaintiff EGAN a wage and earning statement that  
10 erroneously indicated Plaintiff's overtime rate of pay was \$38.50 and \$37.50 per hour  
11 when she earned two rates of regular pay and worked overtime during the same pay  
12 period, in which case Defendant PREMIER should have paid her under the weighted  
13 average requirements of California law. (See *Parth v. Pomona Valley Hospital*  
14 *Medical Center*, 630 F3d 794 (9th Cir. 2010), *cert. den.* 131 S. Ct. 2902 (2011);  
15 *Gormon v Consolidated Edison Corp.*, 488 F.3d 586 at 596 (2d Cir. 2007); D.L.S.E.  
16 Enforcement Policies and Interpretations Manual § 33.1.3.3 (1998); Letter of  
17 D.L.S.E. Chief Counsel dated May 14, 1992 [weighted average method, not the  
18 federal rate-in-affect method, must be used for California-based employees].)

19 51. Similarly, during the April 15, 2018 to April 21, 2018 pay period,  
20 Defendant PREMIER issued Plaintiff EGAN a wage and earning statement that  
21 erroneously indicated Plaintiff's overtime rate of pay was \$38.55 per hour when she  
22 earned two rates of regular pay and worked overtime, in which case Defendant  
23 PREMIER should have paid her under the weighted average requirements.

24 52. Defendant PREMIER also issued Plaintiff EGAN confusing and  
25 inaccurate wage statements, such as the one Defendant issued her on July 13, 2018,  
26 which states that her regular rates of pay were \$25, \$25.70, and \$38.50 and her  
27 corresponding hours worked were 8, 32, and 12, respectively, yet if these were truly  
28 regular hours for a one week work period, then Defendants underpaid her overtime

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1 because it means Defendant PREMIER only paid her straight time for 52 regular  
2 hours, but Defendants should have paid her overtime for every hour worked in excess  
3 of 8 in a day or 40 in the workweek per California law.

4 53. These are a few of many examples of inaccurate wage statements  
5 Defendants issued to Plaintiffs.

6 54. Plaintiffs are not the only victims to these inaccuracies and they allege  
7 there are numerous similarly situated aggrieved employees.

8 55. In addition to the foregoing stand-alone claim under Labor Code § 226,  
9 Plaintiffs' paystubs and those of similarly situated employees of Defendants were  
10 inaccurate because Defendants failed to pay them all wages, as alleged above,  
11 supporting a derivative claim under Labor Code § 226.

## 12 **Illegal Sick Pay Practices**

13 56. During all times relevant, and pursuant to company policy and/or  
14 practice and/or direction and continuing to the present, and pursuant to company  
15 policy and/or practice and/or direction, Defendants underpaid sick pay to the  
16 Plaintiffs.

17 57. On January 1, 2015, California's new sick leave law went into effect.

18 58. California employees' rights to begin accruing and taking sick leave,  
19 however, did not go into effect until July 1, 2015.

20 59. Under California's sick leave law, a qualifying employee begins to  
21 accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first  
22 day of employment. (Labor Code § 246.)

23 60. California's sick leave law covers all employees who work at least 30  
24 days for the same employer within a year in California, including part-time, per diem,  
25 and temporary employees, with some specific exceptions, none of which applies to  
26 the Plaintiffs or Aggrieved Employees. (Labor Code § 246.)

27 61. Under the law, California employees accrue sick pay at no less than one  
28 hour for every 30 hours worked and may begin using accrued paid sick days on their

1 90th day of employment. (Labor Code § 246.)

2 62. Plaintiffs allege Defendants failed to comply with the foregoing laws by  
3 failing to pay Plaintiffs' sick pay based on the average rate of pay during her  
4 inception of employment.

5 63. In particular, for the pay date of June 8, 2018, Defendants paid Plaintiff  
6 EGAN only \$25 per hour for the eight hours of sick pay she accrued, yet her average  
7 hourly rate exceeded \$25 per hour in an amount to be proven at trial.

8 64. Plaintiffs also allege Defendants failed to comply with the foregoing  
9 laws by failing to issue Plaintiffs with sick pay information required under Labor  
10 Code § 2810(a)(1)(H).

11 65. Plaintiffs are informed and believe, and based thereon allege, that  
12 Defendants also violated Labor Code § 247 because Plaintiffs never saw any  
13 posters/notices in the workplace advising them of their rights to take sick leave.

14 **Derivative PAGA Claims**

15 66. During all times relevant, and pursuant to company policy and/or  
16 practice and/or direction, Aggrieved Employees did not receive their final paychecks  
17 immediately upon involuntary termination or within 72 hours of voluntary separation,  
18 Defendants did not pay all final wages at the location of employment, and said final  
19 paychecks did not include all wages due to the employee.

20 67. Based on the foregoing misconduct, Defendants issued Plaintiffs  
21 erroneous paystubs.

22 68. To date, Plaintiffs are informed and believe, and therefore allege, that  
23 Defendants have not paid Aggrieved Employees all wages due and payable, in an  
24 amount to be proven at trial in violation of Labor Code § 203 and 256 via PAGA.

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**REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

1  
2 69. The duties and business activities of the Aggrieved Employees were  
3 essentially the same as the duties and activities of the Plaintiff described above.

4 70. This is a wage and hour representative action filed pursuant to the  
5 PAGA, §§ 2698, 2699 generally consists of the following group:

6 **All current or former nonexempt employees who worked**  
7 **for the Defendants in the state of California from February**  
8 **9, 2018 to the present.**

9 71. All members of the represented group will be referred to as the  
10 “Aggrieved Employees.”

11 72. The “Representative Period” means from **February 9, 2018**, to the  
12 present.

13 73. Plaintiff further alleges, on information and belief, that Aggrieved  
14 Employees, did not receive all wages due at the time their employment ended with  
15 Defendants.

16 74. On information and belief, Defendants’ current and former employees  
17 were subject to wage and hour violations by Defendants, including failing to be paid  
18 for all wages due.

19 75. California law provides that an employee may file an action against an  
20 employer for penalties in connection with violations of the Labor Code and Wage  
21 Orders provided the aggrieved employee file an action on behalf of him or herself and  
22 similarly situated current and former employees.

23 76. At all material times, Defendants and DOES 1 through 50 were and/or  
24 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved  
25 Employees’ employer, within the meaning of California Labor Code § 558, who  
26 violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
27 Labor Code or any provision regulating hours and days of work in any Order of the  
28 Industrial Welfare Commission and, as such, are subject to penalties for each

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1 underpaid employee as set for in Labor Code § 558.

2 77. As set forth in further detail below, as a result of the analysis and  
3 investigation of the Plaintiff's claims, Plaintiff's attorneys sent letters to the  
4 California Labor and Workforce Development Agency (hereinafter referred to as  
5 "LWDA") and to Defendants informing Defendants of his claims and his intent to  
6 pursue litigation.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 78. As to penalty claims under the Labor Code Private Attorney General  
9 Act, on **February 9, 2019, April 2, 2019, March 24, 2020, and April 13, 2020**,  
10 Plaintiffs ORTIZ/EGAN, *et al.*, via counsel, sent correspondence to the LWDA and  
11 Defendants via certified U.S. Mail providing notice of the facts and theories  
12 supporting the violations alleged in this Complaint.

13 79. The statutory period for has expired for the letters alleged above and the  
14 LWDA did not serve Plaintiffs with notice of intent to assume jurisdiction over the  
15 applicable penalty claims and did not provide notice as set forth in Labor Code §  
16 2699.3(a)(2)(A) within the statutory period.

17 80. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies  
18 to pursue claims and remedies as authorized by PAGA.

19 81. The Causes of Action alleged herein are appropriately suited for a  
20 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

21 a. This action involves allegations of violations of provisions  
22 of the California Labor Code that provide for a civil penalty to  
23 be assessed and collected by the LWDA or any departments,  
24 divisions, commissions, boards, agencies, or employees;

25 b. Plaintiffs are "aggrieved employees" because Plaintiffs were  
26 employed by the alleged violator and had one or more of the  
27 Labor Code violations alleged on this Complaint committed  
28 against them; and

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1 c. Plaintiffs have satisfied the procedural requirements of  
2 Labor Code § 2699.3, as set forth above.

3 **FIRST CAUSE OF ACTION**

4 **Representative Claim for PAGA Penalties**

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

6 **Failure to Pay Local/State Minimum/Regular Wages**

7 **in Violation of California Labor Code §§ 1194, 1197, 1198, the applicable**

8 **Industrial Welfare Commission (“IWC”)**

9 **Wage Order, and Where applicable the Local Min. Wage Ordinance**

10 (Against all Defendants)

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

13 83. Pursuant to Labor Code §§ 1194, 1197, 1197.1 and 1198, it is unlawful  
14 for a California employer to suffer or permit an employee to work without paying  
15 wages for all hours worked, as required by the applicable Industrial Welfare  
16 Commission (“IWC”) Wage Order, including but not limited to Wage Orders 4, 5, 15,  
17 and applicable local law.

18 84. During all times relevant, Defendants were required to pay Plaintiffs and  
19 other Aggrieved Employees their respective hourly rate for all hours worked and/or  
20 minimum wages per state law or applicable local law.

21 85. During all times relevant, at least one of the IWC Wage Orders applied  
22 to Plaintiffs’ employment with Defendants.

23 86. Pursuant to the applicable Wage Order, “hours worked” include the time  
24 during which an employee is “suffered or permitted to work, whether or not required  
25 to do so.”

26 87. Under state and, where appropriate, local law, every employer must pay  
27 each nonexempt employee minimum wages. *See, e.g.*, Los Angeles County Minimum  
28 Wage Ordinance (Chap. No. 8.100.010, *et seq.*); City of San Diego Minimum Wage



1 Ordinance, § 39.0107, etc.

2 88. During the proposed Aggrieved Employees Period and based on the  
3 misconduct alleged above, Defendants did not pay Plaintiffs and Aggrieved  
4 Employees minimum/regular wages for all hours suffered or permitted to work in  
5 violation of state and/or local law. (Labor Code §§ 1194, 1197.1.)

6 89. Labor Code § 1194 subdivision (a) permits an action to recover wages  
7 because of the payment of a wage less than the minimum wage “applicable to the  
8 employee” including attorneys’ fees, costs, and interest.

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

16 91. In committing the violations of state law as herein alleged, Plaintiffs are  
17 informed and believe based there upon allege that Defendants have knowingly and  
18 willfully refused to perform their obligations to compensate Aggrieved Employees for  
19 all wages earned and all hours worked.

20 92. As a direct result, Aggrieved Employees have suffered and continue to  
21 suffer, substantial losses related to the use and enjoyment of such compensation,  
22 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to  
23 compel Defendants to fully perform their obligations under state and/or local law.

24 93. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,  
25 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay  
26 period for the initial violation and two hundred (\$200.00) for each aggrieved  
27 employee per pay period for each subsequent violation in which Defendants violated  
28 the minimum wage and/or regular wage provisions of the Labor Code, including but

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1 not limited to §§ 216, 218, 218.5, 558, 1182.12, 1194, 1194.2, and 1197, the exact  
2 amount of the applicable penalty is all in an amount to be shown according to proof at  
3 trial.

4 94. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees  
5 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and  
6 costs incurred herein.

7 **SECOND CAUSE OF ACTION**

8 **Representative Claim for PAGA Penalties**

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

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

11 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**

12 **1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and the Applicable IWC Wage Order**

13 **(Against all Defendants)**

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

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

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

20 98. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage  
21 Order 15, "hours worked" include the time during which an employee is "suffered or  
22 permitted to work, whether or not required to do so."

23 99. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable  
24 Wage Order(s), including but not limited to Wage Order 15, for each hour (or fraction  
25 thereof) an employee works up to forty (40) hours in a week and eight (8) hours in a  
26 day, the employer must pay the employee's regular hourly wage. For each hour (or  
27 fraction thereof) an employee works over forty (40) hours in a week or more than  
28 eight (8) hours in a workday the employer must pay the rate of one and a half times

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1 the employee's regular hourly wage.

2 100. For each hour (or fraction thereof) an employee works more than twelve  
3 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive  
4 day of work, the employer must compensate the employee at the rate of no less than  
5 twice the regular rate of pay for that employee.

6 101. During all times relevant, and pursuant to company policy and/or  
7 practice and/or direction, Defendants required Plaintiffs and the Aggrieved  
8 Employees to work more than 40 hours per week and/or eight hours in a workday and  
9 Defendants did not pay Plaintiff and the Aggrieved Employees all overtime  
10 compensation to which they should have received.

11 102. According to § 49.1.1 of the California Division of Labor Standards and  
12 Enforcement Policies and Interpretations Manual, "In California, as with the federal  
13 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay  
14 includes many different kinds of remuneration, for example: hourly earnings, salary,  
15 piecework earnings, commissions, *certain bonuses*, and the value of meals and  
16 lodging." (Emphasis added.)

17 103. As alleged herein, Defendants failed to, among other things alleged in  
18 this Complaint, include non-discretionary incentive pay paid to Plaintiff ORTIZ and  
19 Aggrieved Employees when calculating their regular rate of pay for payment of  
20 overtime and instead based overtime payments on a multiple of their base hourly  
21 rates. Defendants also underpaid Plaintiffs and Aggrieved Employees overtime by  
22 using arbitrarily lower regular rates of pay and/or different erroneous overtime rates  
23 and/or by not paying Plaintiffs and Aggrieved Employees for their off-the-clock  
24 work.

25 104. In committing the violations of state law as herein alleged, Defendants  
26 have knowingly and willfully refused to perform their obligations to compensate  
27 Aggrieved Employees for all wages earned and all hours worked.

28 105. At all material times, Defendants were and/or are Aggrieved Employees'

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

7 106. In committing the violations of state law as herein alleged, Defendants  
8 have knowingly and willfully refused to perform their obligations to compensate  
9 Aggrieved Employees for all wages earned and all hours worked.

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

17 108. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from  
18 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

### 19 **THIRD CAUSE OF ACTION**

#### 20 **Representative Claim for PAGA Penalties**

#### 21 **Under California Labor Code §§ 2698, 2699, *et seq.* for** 22 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 23 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b,** 24 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

25 (Against all Defendants)

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

28 110. Pursuant to Labor Code § 201, "If an employer discharges an employee,

1 the wages earned and unpaid at the time of discharge are due and payable  
2 immediately.”

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

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

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

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

20 115. Defendants did not properly pay Plaintiffs and Aggrieved Employees  
21 pursuant to the requirements of Labor Code §§ 201, 202, 204 and/or 204b and thereby  
22 Plaintiffs seek the unpaid wages.

23 116. To date, Defendants have not paid Plaintiff ORTIZ, who was fired on  
24 September 21, 2018, and similarly situated Aggrieved Employees all earned wages as  
25 required by law.

26 117. At all material times, Defendants and DOES 1 through 50 were and/or  
27 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved  
28 Employees’ employer, within the meaning of California Labor Code § 558, who

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1 violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
2 Labor Code or any provision regulating hours and days of work in any Order of the  
3 Industrial Welfare Commission and, as such, are subject to penalties for each  
4 underpaid employee as set for in Labor Code § 558.

5 118. In committing the violations of state law as herein alleged, Defendants  
6 have knowingly and willfully refused to perform their obligations to compensate  
7 Aggrieved Employees for all wages earned and all hours worked.

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

13 120. Defendants have deprived Plaintiffs and Aggrieved Employees of their  
14 rightfully earned wages as a direct and proximate result of Defendants' failure and  
15 refusal to pay said compensation and for the reasons alleged in this Complaint

16 121. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs,  
17 damages, and other remedies pursuant to PAGA in an amount to be proven at trial.

#### 18 **FOURTH CAUSE OF ACTION**

#### 19 **Representative Claim for PAGA Penalties**

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

#### 21 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 22 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

23 (Against all Defendants)

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

26 123. Based on the misconduct alleged in this Complaint, Defendants failed to  
27 pay Plaintiff and Aggrieved Employees premium pay for all their missed meal and  
28 rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

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1 124. Because of Defendants' illegal pay practices, said Defendants failed to  
2 pay Plaintiffs and Aggrieved Employees for all meal and rest breaks despite their  
3 requirement under California law and, as such, all culpable Defendants are required to  
4 pay Plaintiffs and Aggrieved Employees for rest break and/or meal break premium  
5 wages.

6 125. Defendants also failed to provide Plaintiffs, and Aggrieved Employees,  
7 legally-compliant meal and rest periods, or compensation in lieu thereof, during their  
8 employment by said Defendants.

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

15 127. Wherefore, Plaintiffs request all remedies available to them and to the  
16 Aggrieved Employees pursuant to PAGA.

17 **FIFTH CAUSE OF ACTION**

18 **Representative Claim for PAGA Penalties**

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

22 (Against all Defendants)

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

25 129. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in  
26 pertinent part, that every employer shall, "semimonthly or at the time of each  
27 payment of wages, shall furnish to his or her employees, either as a detachable part of  
28 the check, draft, or voucher paying the employee's wages, or separately if wages are



1 paid by personal check or cash, an accurate itemized statement in writing showing (1)  
2 gross wages earned, (2) total hours worked by the employee. . . (3) the number of  
3 piece-rate units earned and any applicable piece rate if the employee is paid on a  
4 piece-rate basis, (4) all deductions, provided that all deductions made on written  
5 orders of the employee may be aggregated and shown as one item, (5) net wages  
6 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
7 name of the employee and only the last four digits of his or her social security  
8 number..., (8) the name and address of the legal entity that is the employer. . . , and  
9 (9) all applicable hourly rates in effect during the pay period and the corresponding  
10 number of hours worked at each hourly rate by the employee and, beginning July 1,  
11 2013, if the employer is a temporary services employer as defined in Section 201.3,  
12 the rate of pay and the total hours worked for each temporary services assignment. . .”  
13 (Labor Code § 226 subdivision (a).)

14 130. Upon information and belief, during all times relevant to this action,  
15 Defendants did not provide accurate wage statements throughout the Aggrieved  
16 Employees Period and, thus, Plaintiffs assert this claim both as a stand-alone claim  
17 and derivative of their unpaid wage claims.

18 131. On numerous occasions, an exact amount by which will be proven at  
19 trial, Defendants violated various provisions of § 226, including but not limited to  
20 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to provide Plaintiffs and  
21 the Aggrieved Employees accurate itemized statement in writing accurately showing  
22 gross wages earned, total hours worked by the employee, net wages earned, rates of  
23 pay, among other things.

24 132. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a  
25 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period  
26 for the initial violation and two hundred (\$200.00) for each aggrieved employee per  
27 pay period for each subsequent violation in which all culpable Defendants violated  
28 the applicable Labor Code provisions alleged in this Complaint, the exact amount of

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1 the applicable penalty is all in an amount to be shown according to proof at trial.

2 133. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees  
3 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and  
4 costs incurred herein under §§ 226, 226.3, and 226.6 in an amount to be proven at  
5 trial.

6 **SIXTH CAUSE OF ACTION**

7 **Representative Claim for PAGA Penalties**

8 **For Failure to Maintain Required Records in Violation of California**  
9 **Labor Code §§ 1174, 1198, and the applicable Wage Order**

10 (Against All Defendants)

11 134. As a separate and distinct cause of action, Plaintiff re-alleges and  
12 incorporates by reference, as though fully set forth herein, all the allegations  
13 contained in this Complaint, excepting those allegations that are inconsistent with this  
14 cause of action.

15 135. IWC Wage Order Nos. 4-2001 and 5-2001, § 7 requires every employer  
16 to maintain time and payroll records.

17 136. Plaintiffs are informed and believe and based thereon alleges that during  
18 all times relevant, Defendants failed to comply with § 7 of IWC Orders 4-2001/5-  
19 2001 or whichever applicable Wage Order and with Labor Code § 1174 by failing to  
20 maintain certain records which employers are required to maintain, including but not  
21 limited to, an accurate record indicating the number of hours worked by the Plaintiffs  
22 and meal breaks taken or not taken.

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

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1 138. For the reasons alleged herein, Plaintiffs seek all available remedies  
2 pursuant to PAGA in an amount to be proven at trial including but not limited to  
3 penalties, attorneys' fees, costs, and interest pursuant to law.

4 **SEVENTH CAUSE OF ACTION**

5 **Representative Claim for PAGA Penalties**

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

7 **Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of**

8 **California Labor Code §§ 2802, 1198, and the Applicable Wage Order**

9 (Against all Defendants)

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

12 140. California Labor Code § 2802 requires employers to indemnify their  
13 employees for expenses and losses incurred while discharging their duties or  
14 obedience to the directions of their employer.

15 141. California Labor Code § 2804 mandates that this statutory right cannot  
16 be waived.

17 142. The Plaintiffs and the Aggrieved Employees incurred losses in obedience  
18 to the directions of Defendants including but not limited to home office expenses,  
19 internet, fax machines, cell/home phone, computer, computer  
20 repairs/upgrades/software, office space in their homes, gas and electric, water, and  
21 other similar expenses.

22 143. Upon information and belief, Defendants maintained no policy of  
23 reimbursement of such expenses, and refused to reimburse said expenses even though  
24 the employer knew of and required work to be performed at home.

25 144. The Plaintiffs and Aggrieved Employees were required to purchase and  
26 provide their own equipment, services, and supplies to work for Defendants.

27 145. As a direct result of Defendants' violations of California Labor Code §  
28 2802, the Plaintiffs and Aggrieved Employees suffered and continue to suffer

1 substantial losses related to unpaid expenses, the use and enjoyment of monies owed,  
2 lost interest on monies owed, and attorneys' fees in an amount to be proven at the  
3 time of trial.

4 146. Defendants derived an unjust and inequitable economic benefit in failing  
5 to comply with the law regarding indemnification and reimbursement of employees.

6 147. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a  
7 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period  
8 for the initial violation and two hundred (\$200.00) for each aggrieved employee per  
9 pay period for each subsequent violation in which all culpable Defendants violated  
10 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount  
11 of the applicable penalty is all in an amount to be shown according to proof at trial.  
12 For the reasons alleged herein, Plaintiffs seek all available remedies pursuant to  
13 PAGA in an amount to be proven at trial including but not limited to penalties,  
14 attorneys' fees, costs, and interest pursuant to law.

15 **EIGHTH CAUSE OF ACTION**

16 **Representative Claim for PAGA Penalties**

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

18 **Violations of California's Sick Pay Law Under**

19 **Labor Code §§ 246, 246.5, 247, 247.5, 248.5**

20 (Against all Defendants)

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

23 149. As alleged above, Defendants did not comply with California's sick pay  
24 laws.

25 150. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a  
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period  
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per  
28 pay period for each subsequent violation in which all culpable Defendants violated

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1 the applicable Labor Code provisions alleged in this Complaint, the exact amount of  
2 the applicable penalty is all in an amount to be shown according to proof at trial.

3 151. For the reasons alleged herein, Plaintiffs seek all available remedies  
4 pursuant to PAGA in an amount to be proven at trial including but not limited to  
5 penalties, attorneys' fees, costs, and interest pursuant to law.

6 **PRAYER FOR RELIEF**

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

- 8 1. That the Court find that Defendants' violations as described above are found  
9 to have been willful;
- 10 2. For all remedies available to Plaintiff under the applicable Industrial Welfare  
11 Commission Order including but not limited to Wage Order Numbers 4-2001,  
12 5-2001, 15-2001, and Labor Code §§ 201, 201.3, 202, 203, 203.1, 204 and/or  
13 204b, 208, 210, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 246,  
14 246.5, 247, 247.5, 248.5, 256, 432.5, 510, 512, 551, 552, 558, 558.1, 1021.5,  
15 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802 via § 2698, *et seq.* including  
16 an award of attorneys' fees, costs, interest, liquidated damages, damages, and  
17 penalties according to proof to the extent permitted by law;
- 18 3. For maximum civil penalties available under the Labor Code and applicable  
19 Wage Order as described more particularly in this Complaint, representative  
20 PAGA claims as set forth in Labor Code § 558;
- 21 4. That Plaintiffs and/or Aggrieved Employees be awarded reasonable attorneys'  
22 fees where available by law, including but not limited to pursuant to Labor  
23 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other  
24 applicable laws; and
- 25 5. For such other and further relief as this Court may deem proper and just.

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Dated: June 22, 2020

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