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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF NAPA

CASE MANAGEMENT CONFERENCE

DATE: 10/30/14

TIME: 8:30am

PLACE: Courtroom B

325 Brown Street, Napa CA 94559

DELAY REDUCTION CASE

CORAL MCQUEEN and FELICIA
 TREVINO, individually and on behalf
 of all others similarly situated,

Plaintiffs,

v.

ODD FELLOWS HOME OF
 CALIFORNIA, a California corporation,
 and DOES 1-100,

Defendants.

Case No. C-26-64176

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code § 203, Cont. Wages
2. Cal. Lab. Code §§ 226.7 and 512; Wage Order 5—Meal Period Violations
3. Cal. Lab. Code § 226.7; Wage Order 5—Rest Period Violations
4. Cal. Lab. Code § 204—Late Payment of Overtime Wages
5. Cal. Lab. Code §§ 510, 1194, and 1198 and IWC Wage Order 5 - Failure to Pay Minimum Wage and/or Overtime
6. Cal. Bus. & Prof. Code section 17200 *et seq.*—Restitution and Injunction
7. Cal. Lab. Code § 226 - Failure to Provide Accurate Itemized Wage Statements
8. Civil Penalties pursuant to § 2699 *et seq.* of the California Labor Code.

DEMAND FOR JURY TRIAL

BY FAX

COMES NOW Plaintiffs, and for their causes of action against Defendant, alleges:

PARTIES

1. Plaintiff CORAL MCQUEEN (“Plaintiff McQueen”) is an individual who, at time periods relevant to this Complaint, was living in the County of Napa, State of California and was employed by Defendant within the County of Napa, State of California.

2. Plaintiff FELICIA TREVINO (“Plaintiff Trevino”) is an individual who, at time periods relevant to this Complaint, was living in the County of Napa, State of California and was employed by Defendant within the County of Napa, State of California. Hereinafter Plaintiff McQueen and Plaintiff Trevino may collectively be referred to as the “Plaintiffs”.

3. Defendant ODD FELLOWS HOME OF CALIFORNIA, a California corporation, (“Defendant”) was and is doing business within the State of California, County of Napa, at 1800 Atrium Parkway, Napa, California 94559. Defendant owns and operates retirement communities within California at two locations: 1) The Meadows of Napa Valley, (“The Meadows”) located at 1800 Atrium Parkway, Napa, California; and, 2) Saratoga Retirement Community (“Saratoga Retirement”). According to The Meadows’ website, The Meadows offers four levels of care at its 1800 Atrium Parkway, Napa, California location: 1) “Residential Living for residents that don’t need personal assistance”; 2) “Assisted Living for residents who require assistance with the activities of daily living”; 3) “Skilled Nursing Care in our Skilled Nursing and Rehabilitation”; and, 4) “Memory Care for residents with Alzheimer’s and other types of memory loss.” Similarly, according to Saratoga Retirement’s website, Saratoga Retirement offers four levels of care at its 15400 Fruitvale Avenue, Saratoga, California location: 1) Residential Living; 2) Assisted Living; 3) Skilled Nursing Care and, 4) Memory Care.

JURISDICTION AND VENUE

4. Venue as to Defendant is proper in this judicial district as Defendant maintains an office, transacts business, has an agent, and is found in the County of Napa and is within the jurisdiction of this Court for purposes of service of process. The unlawful acts alleged herein had a direct effect on and were committed within the the County of Napa.

GENERAL ALLEGATIONS

5. Defendant employs both full-time and part-time individuals at the 1800 Atrium Parkway,

1 Napa, California and at the 15400 Fruitvale Avenue, Saratoga, California locations. These workers are
2 primarily engaged in hourly, non-exempt duties. Plaintiffs and the Class they seek to represent consists
3 of “employees in the public housekeeping industry” as defined in Wage Order 5, a copy of which is
4 attached hereto as Exhibit 1. (**Exhibit 1** [Industrial Welfare Commission Wage Order 5].)

5 6. Defendant employed Plaintiff McQueen from 2004 to 2006 and from March 2007 to
6 January 28, 2014, as a Certified Nursing Assistant in the Assisted Living department in Defendant’s
7 Meadows facility, which is currently located at 1800 Atrium Parkway, Napa, California 94559, County
8 of Napa.

9 7. Defendant employed Plaintiff Trevino from December 2012 to the present as a Certified
10 Nursing Assistant in the Assisted Living and Memory Care departments in Defendant’s Meadows
11 facility.

12 **MINIMUM WAGE AND OVERTIME**

13 8. At all times relevant hereto, sections 510, 515, 1194, and 1198 of the California Labor
14 Code, as well as Industrial Welfare Commission Wage Order 5, required the payment of minimum
15 wages for all hours worked, as well as wages equal to (1) one-and-one-half times an employee’s regular
16 rate of pay for all hours worked in excess of eight per day and/or forty per work week, (2) one-and-
17 one-half times an employee’s regular rate of pay for the initial eight hours of work on the seventh
18 consecutive day of work in a workweek, (3) double the employee’s regular rate of pay for all hours
19 worked in excess of twelve per day, and (4) double the employee’s regular rate of pay for all hours
20 worked in excess of eight on the seventh consecutive day of work in a workweek. As alleged herein,
21 Defendant failed to pay Plaintiffs and the Class Members, minimum wages, as well as overtime and/or
22 double time wages in accordance with the California Labor Code and Industrial Welfare Commission
23 Wage Order 5.

24 9. At all relevant times mentioned herein, section 510 of the California Labor Code
25 provided, in relevant part:

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

Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514. [Cal. Lab. Code § 510.]

10. Defendant systematically violated section 510 of the California Labor Code by failing to pay Plaintiffs and class members all overtime wages as required by statute.

11. At all relevant times mentioned herein, section 1194(a) of the California Labor Code provided, in relevant part:

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. [Cal. Lab. Code § 1194(a).]

12. With regard to the employment of Plaintiffs as described above, the provisions of subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable in that no alternative workweek schedule had been adopted pursuant to section 510 and Plaintiffs' employment was not governed by a collective bargaining agreement as described in section 514 of the California Labor Code.

13. During their employment with Defendant, Defendant failed to provide Plaintiffs or Class Members with the proper minimum wage and overtime compensation as required by the California Labor Code and/or Wage Order 5. For example, and without limitation, Plaintiffs were routinely denied overtime for hours worked in excess of 40 hours per week and/or 8 hours per day because their supervisors, without their permission, unilaterally adjusted their time records to deprive Plaintiffs of actual time worked during meal periods, which is a violation of the minimum wage and overtime law, which require the payment of minimum wages, as well as time and one-half for all hours worked in excess of 8 hours per day and/or in excess of 40 hours per week. Furthermore, during the course of her employment, Defendant Trevino had at least four different rates of pay, including (1) an hourly rate for

1 working on the floor of the Assisted Living department; (2) a second hourly rate for passing medication
2 to residents in the Assisted Living department; (3) a third hourly rate for working on the floor of the
3 Memory Care department; and, (4) a fourth hourly rate for passing medication to residents in the
4 Memory Care department. In many instances when Plaintiff Trevino worked overtime hours, Defendant
5 failed to properly calculate and pay her accurate overtime wages based on her proper regular rate of pay.

6 14. Furthermore, in The Meadows 2012 Employee Handbook, Defendant promulgated and
7 enforced an unlawful policy related to overtime, stating, in part: “[e]mployees may make up missed
8 work time without overtime, if make-up time is performed during the same forty (40) hour work week
9 and if no more than eleven (11) hours are worked in a single day, and is first approved by their
10 supervisor.” [Exhibit 2, 2012 Employee Handbook, “Overtime”.] There is no provision in either the
11 California Labor Code or the applicable Wage Order allowing an employer to refuse to pay overtime for
12 “make-up” work as long as it is done within the same forty (40) hour workweek. On its face, the policy
13 promulgated by Defendant in The Meadows 2012 Employee Handbook, is unlawful because it deprived
14 employees of overtime pay for hours worked in excess of eight (8) in a single day. Based on this
15 unlawful policy, Plaintiffs and Class Members were routinely deprived of overtime pay during the class
16 period.

17 15. In The Meadows 2012 Employee Handbook, under the section entitled “Time Cards”,
18 Defendant sets forth its policy related to timekeeping and the adjustment to employee timekeeping
19 records, which states, “[t]he Meadows is required to maintain an accurate record of hours worked by all
20 non-exempt employees. Wages are computed directly from the time record. **Employees are required**
21 **to clock in and out for each shift, and meal break period.** Employees are to clock in no earlier than
22 five (5) minutes before their shift begins and out no later than five (5) minutes after the end of the shift
23 unless authorized by their supervisor. Shifts will be calculated according to the day in which a
24 continuous shift ends for calculating overtime, holiday pay, etc. Employees are expected to be at their
25 work area at the start of the shift. If an employee misses a punch on their time card, they are required to
26 fill out a “missed punch” slip indicating the reason for the missed punch and submit it, in a timely
27 manner, for supervisor approval. If missed punches become excessive, employees will be subject to
28 disciplinary action, up to and including termination.” [Exhibit 2, 2012 Employee Handbook, “Time

1 Cards”.]

2 16. Plaintiffs and Class Members were routinely denied minimum wages and overtime pay
3 due to the unilateral adjustment of employee time by Defendant, which was done after-the-fact and
4 without employee consent. For example, if Plaintiffs worked in excess of 8 hours in a day, Plaintiffs’
5 supervisors routinely adjusted Plaintiffs’ time records to reflect an 8 hour day, therefore depriving
6 Plaintiffs of overtime pay for hours actually worked by Plaintiffs. Despite the purported policy that
7 required the *employee* to fill out and submit a missed punch slip in order to request a time adjustment for
8 a missed punch or to change an employee’s actual punch, Plaintiffs’ supervisors routinely filled out a
9 missed punch slip without requesting any information from Plaintiffs or requiring Plaintiffs’ signature,
10 and then unilaterally adjusted Plaintiffs’, and Class Members’, time to deprive Plaintiffs and Class
11 Members of minimum wages and/or overtime pay to which they were entitled. [Exhibit 3, Missed
12 Punch Request Forms and corresponding time records showing unauthorized time adjustment by
13 Defendant without employee authorizaton.]

14 **MEAL PERIODS**

15 17. Sections 226.7 and 512 of the California Labor Code, as well as 8 California Code of
16 Regulations section 11050 codify an employee’s right to meal and rest periods. At all relevant times
17 mentioned herein, section 512(a) provided:

18 An employer may not employ an employee for a work period of more than five hours per
19 day without providing the employee with a meal period of not less than 30 minutes, except
20 that if the total work period per day of the employee is no more than six hours, the meal
21 period may be waived by mutual consent of both the employer and the employee. An
22 employer may not employ an employee for a work period of more than 10 hours per day
23 without providing the employee with a second meal period of not less than 30 minutes,
except that if the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first meal
period was not waived. [Cal. Lab. Code § 512(a).]

24 18. At all relevant times mentioned herein, section 226.7(b) provided:

25 If an employer fails to provide an employee a meal period or rest period in accordance
26 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
27 employee one additional hour of pay at the employee’s regular rate of compensation for
each work day that the meal or rest period is not provided. [Cal. Lab. Code § 226.7(b).]

28 ///

1 19. Plaintiffs and Class Members were routinely denied the ability to take timely,
2 uninterrupted 30-minute meal breaks free from all duties. For example, while working the overnight
3 shift, Plaintiff McQueen and her co-workers were prevented by Defendants from taking their meal
4 breaks because they were not allowed to leave their stations as there were only 4 attendants on duty in
5 the Assisted Living department during such overnight shifts. If any of the 4 attendants left their
6 stations during the overnight shift, residents and patients would be without any ability to request
7 assistance. In October 2013, Plaintiff McQueen complained to her supervisors about this practice of
8 understaffing, which deprived Plaintiff McQueen and her co-workers of a 30-minute, uninterrupted
9 meal period free from all duties. Shortly thereafter, Defendant began to staff an extra person for the
10 overnight shift in the Assisted Living department to provide coverage so the 4 regular employees
11 could take 30-minute meal breaks. However, for the majority of the class period, the employees were
12 routinely deprived of a 30-minute meal period free from all duties. Additionally, it was the policy of
13 Defendant that employees could not leave the premises during their 30-minute meal break on the
14 overnight shift.

15 20. Additionally, Plaintiffs and the other employees were prevented from taking proper
16 rest and meal breaks pursuant to California Labor Code sections 226.7 and 512 and the applicable
17 Wage Order. For example, Defendant required Plaintiffs to “punch out” for meal breaks even if the
18 meal break was not taken in a timely fashion due to business needs and resident needs. In addition,
19 Defendant would adjust employees’ timecards to reflect that a meal break had been taken before
20 the fifth hour of work even if the meal break was taken sometime thereafter. For example, if
21 Plaintiffs did not punch out for a meal break in a timely fashion, Plaintiffs’ supervisors routinely
22 adjusted Plaintiffs’ time records to reflect a timely meal break punch, therefore depriving Plaintiffs of
23 minimum wages and/or overtime wages, as well as a one-hour wage premium, even if business needs
24 had prevented Plaintiffs from taking the meal break in a timely fashion. Despite the purported policy
25 that required the *employee* to fill out and submit a missed punch slip in order to request a time
26 adjustment for a missed punch, Plaintiffs’ supervisor routinely filled out a missed punch slip
27 unbeknownst to Plaintiffs, without inquiring or requesting any information from Plaintiffs or requiring
28 Plaintiffs’ signature, and then unilaterally adjusted Plaintiffs’, and Class Members’, time to deprive

1 Plaintiffs and Class Members of a one-hour wage premium for missed or untimely meal breaks due to
2 business needs. [**Exhibit 3**, Missed Punch Request Forms and corresponding time records.] Plaintiffs
3 allege that Defendant’s failure to provide proper rest and meal breaks to Plaintiffs and Class
4 Members subjects Defendant to civil penalties. As set forth herein, Plaintiff McQueen has obtained
5 authorization from the California Labor and Workforce Development Agency (“LWDA”) to collect
6 civil penalties against Defendant under the Private Attorneys General Act (“PAGA”), California
7 Labor Code section 2698 *et seq.*, on behalf of herself and other former and current aggrieved
8 employees.

9 21. Additionally, through their employment with Defendant, Plaintiffs and Class Members
10 were routinely deprived of two fully uninterrupted 30-minute meal breaks when working ten hours or
11 more because they could not take the second meal break without permission from their direct
12 supervisors. Further, Defendant failed to obtain valid written meal waivers from Plaintiffs or the other
13 Class Members.

14 22. As a result of Defendant’s policy of denying to Plaintiffs and Class Members two full,
15 uninterrupted meal periods when working in excess of 10 hours in a day, Plaintiffs and Class Members
16 are entitled to a one-hour wage premium and restitution for each day these meal periods were not
17 properly provided, as well as the resulting civil penalties.

18 23. In The Meadows 2012 Employee Handbook, Defendant promulgated an unlawful policy
19 related to meal breaks, stating, in part: “[e]mployees are required to take at least a thirty (30) minute
20 unpaid meal break for each shift of more than five hours, unless six hours of work will complete the
21 shift and the meal period may be waived by mutual consent of both the employer and the employee.
22 Employees may not waive their meal period for shifts over six hours. Employees working for more than
23 ten (10) hours may take a second thirty (30) minute meal period per day, unless the work period is less
24 than twelve (12) hours, then the second meal period may be waived by written mutual consent.”
25 [**Exhibit 2**, 2012 Employee Handbook, “Meal and Break Periods”.] The policy is inadequate because it
26 fails to advise employees *when* the meal periods must be taken in order for them to be considered timely
27 under California law. As a result, Plaintiffs and Class Members were routinely deprived of one-hour
28 wage premiums in those instances when they were denied the opportunity to take their meal breaks

1 within the time periods proscribed by law.

2 **REST PERIODS**

3 24. Plaintiffs and Class Members were also deprived of statutorily required rest periods under
4 California Labor Code section 226.7 and Wage Order 5. Wage Order 5 provides, in relevant part:

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

10 (B) If an employer fails to provide an employee a rest period in accordance with the
11 applicable provisions of this order, the employer shall pay the employee one (1) hour of
12 pay at the employee's regular rate of compensation for each workday that the rest period
is not provided. [8 Cal. Code Regs. § 11040(12).]

13 25. During their employment with Defendant, Plaintiffs and Class Members were routinely
14 deprived of their rest breaks because they could not take rest breaks without permission from their direct
15 supervisors. In most instances Plaintiffs and Class Members were not provided with 10-minute paid rest
16 break by their supervisors. Accordingly, Plaintiffs and Class Members are entitled to an additional hour
17 of pay for each workday a rest period was missed. [Cal. Lab. Code § 226.7(b); 8 Cal. Code Regs. §
18 11040(12)(B).]

19 26. During a portion of the class period, it was Defendant's policy that all non-exempt
20 employees "clock in and out for all meal and *rest breaks*." [Exhibit 4, The Meadows of Napa Valley
21 Meal and Rest Break Policy 2008, emphasis added.] However, business needs often prevented Plaintiffs
22 and Class Members from being able to take rest breaks at all or in a timely fashion. Defendant has the
23 time records showing missed and/or untimely rest breaks during the period employees were required to
24 punch in and out for rest breaks, however, Defendant failed to pay one-hour wage premiums to Plaintiffs
25 and Class Members when they did not received their ten-minute paid rest breaks for each four hours
26 worked or major fraction thereof.

27 27. Furthermore, Defendant has promulgated an unlawful policy related to the provision of
28 rest breaks, which states in pertinent part, "[e]mployees will be given two 15-minute break periods with

1 pay during a regular eight-hour shift. Break periods are not allowed to be added to the meal period. ***If***
2 ***less than eight (8) hours is worked, a 15-minute break will be given for every four (4) hours worked.***
3 [Exhibit 2, 2012 Employee Handbook, “Meal and Break Periods”, emphasis added.] Defendant’s rest
4 break policy fails to provide for breaks for every four hours worked “*or major fraction thereof*” as
5 required by Wage Order 5 and other applicable laws. For example, if an employee worked 7.5 hours,
6 based on Defendant’s policy in the 2012 Employee Handbook, the employee would only be provided
7 one (1) rest break instead of two (2) rest breaks as they are entitled to receive under the law. As a result,
8 Plaintiffs and Class Members were routinely denied a second rest break if they worked a shift between
9 six (6) and eight (8) hours in length. Due to Defendant’s unlawful policy, Defendant was obligated to
10 pay one-hour wage premiums to Plaintiffs and Class Members for the missed rest breaks but Defendant
11 failed to do so.

12 **CONTINUING WAGES**

13 28. Plaintiff McQueen and Class Members are entitled to damages and restitution of accrued
14 but unpaid wages earned on account of all of the services they performed, including without limitation,
15 those instances when they worked through meal periods and rest periods but they did not receive
16 minimum wages and/or overtime pay.

17 29. Plaintiff McQueen voluntarily resigned her employment with Defendant and her last day
18 of employment was January 28, 2014. Prior to the end of her employment, Plaintiff McQueen gave
19 Defendant in excess of 72 hours notice that she was quitting her employment with Defendant. Upon the
20 end of her employment, Plaintiff McQueen was not provided payment of all outstanding wages owed to
21 her.

22 30. At all relevant times mentioned herein, section 201 of the California Labor Code
23 provided that “wages earned and unpaid at the time of discharge are due and payable immediately.”
24 Cal. Lab. Code § 201. Furthermore, with respect to employees who quit, the California Labor Code
25 provides:

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

1 Notwithstanding any other provision of law, an employee who quits without providing a
2 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute the date of payment
4 for purposes of the requirement to provide payment within 72 hours of the notice of
5 quitting. [Cal. Lab. Code § 202(a).]

6 31. Defendant did not compensate Plaintiff McQueen and other Class Members for wages
7 earned on account of working through meal periods and rest periods as well as minimum wage and
8 overtime wages owed to Plaintiff McQueen and Class Members. To date, Plaintiff McQueen and other,
9 former employees of Defendant have not been compensated fully for the work that they performed for
10 Defendant.

11 32. At all relevant times mentioned herein, section 203 of the California Labor Code
12 provided:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202 and 202.5, any wages of an employee who is discharged or who
15 quits, the wages of the employee shall continue as a penalty from the due date thereof at
16 the same rate until paid or until action therefore is commenced; but the wages shall not
17 continue for more than 30 days. [Cal. Lab. Code § 203(a).]

18 33. Plaintiff McQueen contends that Defendant's failure to pay Plaintiff McQueen and
19 Class Members who are former employees within the time provided by the California Labor Code was
20 and is "willful" within the meaning of section 203 of the California Labor Code and that, accordingly,
21 they are entitled to the continuing wages for which provision is made by section 203 of the California
22 Labor Code.

23 **CLASS-ACTION ALLEGATIONS**

24 34. The class represented by Plaintiffs (hereafter referred to as the "Class") consists of all
25 natural persons who were employed by Defendant in California as non-exempt workers during the
26 period beginning four years prior to the filing of the Complaint (such persons are referred to herein as
27 "Class Members," and such period is referred to hereafter as the "Class Period").

28 35. Defendant's failure to make payments within the time provided by sections 201 or 202 of
the California Labor Code has been and is "willful" within the meaning of section 203 of the California
Labor Code and that, accordingly, Plaintiff McQueen and each Class Member who quit or were
discharged and were not paid in accordance with the law is entitled to the continuing wages provided for
by section 203 of the California Labor Code.

1 36. Defendant's failure to pay wages as provided by section 226.7 of the California Labor
2 Code and the applicable Wage Order entitles Plaintiffs and Class Members to payment of such earned
3 but unpaid wages owing on account of failing to provide proper meal periods and an additional hour of
4 pay at the employee's regular rate of compensation for each work day that the proper meal and rest
5 periods were not provided, as well as liquidated statutory damages.

6 37. In those instances (1) when an employee was required to work through their lunch break,
7 (2) when an employee was required to come back from lunch before they were able to finish their entire
8 30-minute meal period, (3) when an employee did not receive their lunch break within the first five
9 hours of their workday, or (4) where an employee was not provided with a legally-required second meal
10 break, Defendant failed to provide their employees with one additional hour of pay at the employee's
11 regular rate of compensation.

12 38. In those instances (1) when an employee was required to work through their 10 minute
13 rest break or (2) did not receive their 10 minute rest break in a timely fashion, Defendant failed to
14 provide its employees with one additional hour of pay at the employee's regular rate of compensation.

15 39. The number of Class Members is great, believed to be well in excess of one hundred, but
16 fewer than so many as to make the class unmanageable. It therefore is impractical to join each Class
17 Member as a named plaintiff. Accordingly, utilization of a class action is the most economically
18 feasible means of determining the merits of this litigation.

19 40. Despite the size of the proposed Class, the Class Members are readily ascertainable
20 through an examination of the records that Defendant is required by law to keep. Likewise, the dollar
21 amount owed to each Class Member is readily ascertainable by an examination of those same records.

22 41. Common questions of fact and of law predominate in the Class Member's claims over
23 individual issues regarding the money owed to each Class Member. Common questions include, but are
24 not limited to, the following:

- 25 a. Whether Defendant failed to provide employees with proper meal periods.
- 26 b. Whether Defendant and Class Members executed proper meal waivers.
- 27 c. Whether Defendant failed to provide a one-hour wage premium in those
28 instances when employees were not provided with a meal period.

- 1 e. Whether Defendant failed to provide employees with proper rest periods.
- 2 f. Whether Defendant failed to provide a one-hour wage premium in those
- 3 instances when employees were not provided with a proper rest period.
- 4 g. Whether Defendant failed to pay all wages in a timely fashion upon each and
- 5 every employee's discharge from, or resignation of, employment in violation of sections
- 6 201 and/or 202 of the California Labor Code.
- 7 h. Whether Defendant failed to pay the correct overtime rate to employees based on
- 8 their regular rate of pay.
- 9 i. Whether Defendant failed to pay overtime in a timely fashion under the California
- 10 Labor Code and applicable Wage Order.
- 11 j. Whether Defendant failed to pay minimum wages under the California Labor
- 12 Code and the applicable Wage Order.
- 13 k. Whether Defendant's conduct constitutes unlawful, unfair, or fraudulent business
- 14 practices.
- 15 l. Whether Defendant's conduct constitutes unfair competition.
- 16 m. Whether Plaintiffs and Class Members are entitled to equitable relief in the
- 17 form of restitution for Defendant's not providing employees with accurate itemized wage
- 18 statements.
- 19 n. Whether Defendant's misconduct as alleged herein was intentional.
- 20 o. Whether Plaintiffs and Class Members were injured by Defendant's misconduct
- 21 as alleged herein.
- 22 42. There is a well-defined community of interest in the questions of law and fact common to
- 23 the Class Members.
- 24 43. Plaintiffs' claims are typical of the claims of the Class Members, which claims all arise
- 25 from the same general operative facts, namely and without limitation, Defendant did not compensate its
- 26 employees as required by the California Labor Code and applicable Wage Order and that Defendant did
- 27 not provide proper rest and meal breaks as by the California Labor Code and applicable Wage Order.
- 28 Plaintiffs have no conflict of interest with the other Class Members and they are able to represent the

1 Class Members' interests fairly and adequately.

2 44. A class action is a superior method for the fair and efficient adjudication of this
3 controversy. The persons within the Class are so numerous that joinder of all of them is impracticable.
4 The disposition of all claims of the members of the Class in a class action, rather than in individual
5 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
6 prosecution of separate claims against Defendant is small when compared with the efficiency of a class
7 action.

8 **FIRST CLAIM FOR RELIEF**
9 **(Cal. Lab. Code section 203—Continuing Wages)**
(On Behalf of Plaintiff McQueen and the Class)

10 45. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set
11 forth in this Complaint.

12 46. Defendant's failure to compensate Plaintiff McQueen and the Class Members within the
13 time provided by sections 201 and 202 of the California Labor Code, despite Defendant's knowledge of
14 its obligation to do so, was "willful" within the meaning of section 203 of the California Labor Code.
15 Plaintiff McQueen and the Class Members are, therefore, entitled to continuing wages from the date on
16 which his or her wages were due until the date on which Defendant makes payment of the wages, not to
17 exceed thirty days, restitution and damages according to proof, interest thereon, civil penalties,
18 attorney's fees, and costs of suit.

19 **SECOND CLAIM FOR RELIEF**
20 **(Cal. Lab. Code sections 226.7, 512 and Wage Order 1—Meal Period Violations)**
(On Behalf of Plaintiffs and the Class)

21 47. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set
22 forth in this Complaint.

23 48. The right to meal periods has been codified in sections 226.7 and 512 of the California
24 Labor Code and the applicable Wage Order.

25 49. Compensation for missed meal periods constitutes wages within the meaning of the
26 California Labor Code.

27 50. Plaintiffs contend that Defendant failed to provide Plaintiffs and Class Members with
28 meal periods within the first five (5) hours of work in a single day during which Plaintiffs and Class

1 Members were relieved of all duties. Plaintiffs contend that Defendant failed to provide Plaintiffs and
2 Class Members with two thirty-minute meal periods when working in excess of ten (10) hours in one
3 day. Plaintiffs and the Class Members did not execute any written waivers to waive the second meal
4 period for shifts between ten (10) and twelve (12) hours in a single day. Plaintiffs contend that
5 Defendant failed to pay a “one-hour wage premium” for instances in which Plaintiffs and Class
6 Members were prevented from taking a timely meal break.

7 51. Plaintiffs contend that Defendant’s failure to comply with sections 226.7 and 512 of the
8 California Labor Code and with the applicable Wage Order subjects Defendant to civil penalties,
9 damages and restitution.

10 52. Accordingly, pursuant to the California Labor Code, Plaintiffs and the Class Members are
11 entitled to restitution and damages according to proof, interest thereon, civil penalties, attorney’s fees,
12 and costs of suit.

13 **THIRD CLAIM FOR RELIEF**
14 **(Cal. Lab. Code section 226.7 and Wage Order 1—Rest Period Violations)**
15 **(On Behalf of Plaintiffs and the Class)**

16 53. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set
17 forth in this Complaint.

18 54. Compensation for missed rest periods constitutes wages within the meaning of the
19 California Labor Code.

20 55. Plaintiffs contend that Defendant failed to provide Class Members with proper rest
21 periods as required by section 226.7 of the California Labor Code and Wage Order 5. Plaintiffs contend
22 that Defendant failed to pay a “one-hour wage premium” for instances in which Plaintiffs and Class
23 Members were prevented from taking a timely rest break.

24 56. Plaintiffs contend that Defendant’s failure to comply with section 226.7 and with the
25 applicable Wage Order subjects Defendant to civil penalties, damages, and restitution.

26 57. Accordingly, pursuant to the California Labor Code, Plaintiffs and the Class Members are
27 entitled to restitution and damages according to proof, interest thereon, civil penalties, attorney’s fees,
28 and costs of suit.

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FOURTH CLAIM FOR RELIEF
(Cal. Lab. Code section 204—Late Payment of Overtime)
(On Behalf of Plaintiffs and the Class)

58. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set forth in this Complaint.

59. Plaintiffs allege that they were not paid their overtime by the next regular payroll period required by California Labor Code section 204 (b)(1). Plaintiffs and Class Members are therefore entitled to damages and civil penalties under the California Labor Code.

FIFTH CLAIM FOR RELIEF
(Cal. Lab. Code §§ 510 and 1194, Failure to Pay Minimum Wage and Overtime)
(On Behalf of Plaintiffs and the Class)

60. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set forth in this Complaint.

61. At all times herein relevant, the sections of the California Labor Code and of the California Code of Regulations referenced herein applied to the employment of Plaintiffs and Class Members.

62. Pursuant to California Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the California Code of Regulations.

63. At all times herein relevant, sections 510, 1194, and 1198 of the California Labor Code and 8 California Code of Regulations section 11040 provided for the payment of both minimum wages, as well as overtime wages equal to one-and-one-half times an employee's regular rate of pay for all hours worked over eight per day or forty per week, as well as for the payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve in any day and for all hours worked in excess of eight on the seventh day of work.

64. Defendant, by failing to pay Plaintiffs and the Class Members at least minimum wage and/or the proper overtime compensation for all of their hours worked, has violated sections 510 and 1194 of the California Labor Code and sections 3 and 4 of Industrial Welfare Commission Wage Order number 5.

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1 65. Plaintiffs and the Class Members are, accordingly, entitled to recovery of the unpaid
2 balance of the full amount of their unpaid minimum wages and/or overtime compensation, including
3 interest thereon, reasonable attorneys' fees and costs of suit, in accordance with section 1194(a) of the
4 California Labor Code.

5 66. Plaintiffs and the Class Members are also entitled to liquidated damages in accordance
6 with section 1194.2 of the California Labor Code.

7 **SIXTH CLAIM FOR RELIEF**
8 **(Cal. Bus. & Prof. Code section 17200 *et seq.*—Restitution and Injunction)**
9 **(On Behalf of Plaintiffs and the Class)**

10 66. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set
11 forth in this Complaint.

12 67. Defendant is a "person" within the meaning of section 17201 of the California Business
13 and Professions Code. Plaintiffs are suing both in their individual capacities and on behalf of the
14 general public, and they are proper representatives because they have suffered direct harm from the
15 illegal business practices herein alleged.

16 68. Beginning at an exact date unknown to Plaintiffs, Defendant has committed acts of unfair
17 business practice or act as defined in California Business and Professions Code section 17200 *et seq.* by
18 engaging in the following acts and practices: (1) failing to provide minimum wages and/or overtime
19 compensation to its employees in accordance with the California Labor Code; (2) failing to pay its
20 discharged employees in accordance with sections 201, 202, and 203 of the California Labor Code; and
21 (3) failing to provide employees with proper meal and rest periods as required by California law and the
22 applicable Wage Order.

23 69. Under section 17200 *et seq.* of the Business and Professions Code, this Court is
24 authorized to enter such judgment or order as may be necessary to restore to any person in interest the
25 money or property acquired by Defendant through its unlawful and unfair business practices.

26 70. Plaintiffs and the Class Members are, therefore, entitled to a judgment of this Court
27 requiring Defendant to pay to Plaintiffs and each identifiable Class Member the unpaid wages and
28 withheld wages, to which such individuals were and are entitled but which have been denied them by
reason of Defendant's conduct alleged herein.

1 71. In other words, Plaintiffs and the Class Members are entitled to restitution of their unpaid
2 meal and rest period wages and withheld and/or deducted wages, as such funds should be distributed to
3 the individuals who are rightfully entitled to such monies.

4 72. The named Plaintiffs are proper individuals to bring this litigation as a “representative
5 action” to compel restitution. The named Plaintiffs are individuals who have suffered damage as a result
6 of the unlawful actions of Defendant herein alleged. The actions of Defendant herein alleged are in
7 violation of various statutes and in contravention of established public policy, and, accordingly, a court
8 order compelling it to cease and desist from such actions and to make restitution is a vindication of an
9 important public right. The extent to which Defendant has been unjustly enriched as a result of its
10 unlawful and unfair business practices is a matter that can be ascertained by examination of the payroll
11 and accounting records that Defendant is required by law to keep and maintain and that Defendant has
12 kept and maintained.

13 73. The identity of the persons to whom restitution should be made is a matter that can be
14 ascertained from those records that Defendant is required by law to keep and maintain and that it has
15 kept and maintained.

16 74. Plaintiffs’ efforts in securing the requested relief will result “in the enforcement of an
17 important right affecting the public interest,” as “a significant benefit, whether pecuniary or
18 nonpecuniary, [will] be[] conferred on . . . a large class of persons.” [Cal. Civ. Proc. Code § 1021.5.]
19 Moreover, because “the necessity and financial burden of private enforcement . . . are such as to make
20 [an attorney’s fee] award appropriate, and [because attorney’s] fees should not in the interest of justice
21 be paid out of the recovery, if any,” id., Plaintiffs requests that the Court also award reasonable
22 attorney’s fees pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

23 75. Plaintiffs and the Class Members have no plain, speedy, or adequate remedy at law,
24 inasmuch as Defendant, unless enjoined by an order of this Court, will continue to violate systematically
25 the provisions of sections 201, 202, 203, 204, 221, 226, 226.7, and 512, of the California Labor Code
26 and the applicable Wage Order.

27 76. Accordingly, injunctive relief is proper and necessary pursuant to section 17203 of the
28 California Business and Professions Code.

77. Pursuant to section 17205, the remedies and penalties provided by section 17200 *et seq.* are cumulative to the remedies and penalties available under all other laws of this state.

SEVENTH CLAIM FOR RELIEF
(Failure to Provide Accurate Itemized Wage Statements)
(On Behalf of Plaintiffs and the Class)

78. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set forth in this Complaint.

79. Section 226 of the California Labor Code provides:

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

• • • •

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

• • • •

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

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80. In particular, and as set forth *supra*, at all times herein relevant, section 226 of the California Labor Code and 8 California Code of Regulations section 11050 required that employers provide employees with itemized wage statements showing, without limitation, (1) all wages earned on account of missed meal and rest breaks, (2) the total actual hours worked by the employee, (3) information regarding the time and wages for work preformed by Plaintiffs but not paid for by Defendant, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant failed to provide Plaintiffs and Class Members with all of the information required by section 226 of the California Labor Code. As a result of Defendant's violation of Labor Code section 226, the employee is entitled to recover the greater of all actual damages or \$50 for the initial violation and \$100 for each subsequent violation, up to a maximum of \$4,000. As a result of Defendant's failure to provide the information required by Labor Code section 226, Defendant is liable to Plaintiffs and Class Members for the damages for which provision is made by Labor Code section 226(e).

81. Plaintiffs and the Class Members request relief as described below.

EIGHTH CLAIM FOR RELIEF
(Civil Penalties Pursuant to California Labor Code)
(On Behalf of Plaintiff McQueen, the State of California and the Class Against Defendant)

82. Plaintiffs replead, reallege, and incorporate by reference each and every allegation set forth in this Complaint.

83. Pursuant to section 2699.3(a)(1) of the California Labor Code, on approximately May 23, 2014, Plaintiff McQueen gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the California Labor Code alleged to have been violated by Defendant, including the facts and theories set forth in the original Complaint. Also, on May 23, 2014, Plaintiff McQueen gave written notice by certified mail to Defendant, through its registered agent for service of process, of the specific provisions of the California Labor Code alleged to have been violated.

84. On or about June 26, 2014, Mark Woo-Sam, General Counsel of the LWDA, sent a letter by certified mail to Plaintiff McQueen and Defendant, stating that the LWDA did not intend to

investigate the alleged violations, at true and correct copy of which is attached hereto as **Exhibit 5**.
Accordingly, Plaintiff may amend the existing Complaint to add a cause of action under the Labor Code
Private Attorneys General Act. Cal. Lab. Code § 2699.3(a)(2)(C).

85. Plaintiff McQueen contends that, without limitation, sections 203, 204, 226, 226.7, 510, 512, 1194 and 1198, enable Plaintiff McQueen and the Class Members to recover civil penalties, as well as attorneys' fees and costs, from Defendant through a civil action on behalf of Plaintiff McQueen and other aggrieved employees pursuant to section 2699 of the California Labor Code.

PRAYER FOR RELIEF

1. That this Court certify the Class described in this Complaint.

2. That, with respect to the First Claim for Relief, it be adjudged that the failure of Defendant to make payment of wages within the time prescribed by sections 201 and/or 202 of the California Labor Code was "willful" within the meaning of section 203 of the California Labor Code and that this Court award Plaintiff McQueen and Class Members thirty-days continuing wages pursuant to California Labor Code section 203 as against Defendant according to proof.

3. With respect to the Second Claim for Relief, this Court enter judgment in favor of Plaintiffs and Class Members for compensatory damages in an amount according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiffs and Class Members for improper meal periods, for interest calculated according to law on any compensation due from the day such amounts were due for improper meal periods, and for reasonable attorney's fees and the costs of bringing this suit.

4. With respect to the Third Claim for Relief, this Court enter judgment in favor of Plaintiffs and Class Members for compensatory damages in an amount according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiffs and Class Members for improper rest periods, for interest calculated according to law on any compensation due from the day such amounts were due for improper rest periods, and for reasonable attorney's fees and the costs of bringing this suit.

5. That, with respect to the Fourth Claim for Relief, Plaintiffs and Class Members be awarded judgment, interest, and costs, according to proof and against Defendant.

1 6. With respect to the Fifth Claim for Relief, this Court enter judgment in favor of Plaintiffs
2 and Class Members for damages in an amount according to proof at time of trial representing the
3 amount of unpaid minimum wages and overtime compensation owed to Plaintiffs and Class Members,
4 liquidated damages, interest, reasonable attorneys' fees and costs of suit pursuant to California Labor
5 Code sections 1194 and 1194.2.

6 7. That, with respect to the Sixth Claim for Relief, it be adjudged that Defendant's
7 violations of the the applicable Wage Order, and sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512,
8 1194 and 1198 of the California Labor Code, violated section 17200 *et seq.* of the California Business
9 and Professions Code. Accordingly, Plaintiffs request that the Court order Defendant to pay restitution
10 to Members of the Class in the form of restitution of their unpaid state minimum wages and overtime
11 wages, continuing wages, and wages accrued on account of missed meal breaks and rest periods
12 unlawfully retained by Defendant, with interest. Furthermore, Plaintiffs request that the Court issue an
13 order or decree pursuant to section 17203 of the California Business and Professions Code that
14 permanently enjoins Defendant from pursuing its practice of violating the law. Finally, Plaintiffs
15 request that the Court award Plaintiffs their reasonable attorneys' fees and costs incurred in the
16 prosecution of the Sixth Claim for Relief pursuant to section 1021.5 of the California Code of Civil
17 Procedure.

18 8. With respect to the Seventh Claim for Relief, this Court enter judgment in favor of
19 Plaintiffs and Class Members for damages in an amount according to proof at time of trial for not
20 providing accurate itemized wage statements to Plaintiffs and Class Members; for reasonable
21 attorney's fees and the costs of bringing this suit pursuant to section 226(e) of the California Labor
22 Code.

23 9. That, under the Eighth Claim for Relief, Plaintiffs and Class Members be awarded civil
24 penalties, attorneys' fees and costs of suit, all according to proof, pursuant to section 2699(g) of the
25 California Labor Code.

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10. For such further relief as the Court may order.

Plaintiffs demand a trial by jury as to all counts.

DATED: July 22, 2014

NORTH BAY LAW GROUP
LAW OFFICES OF JAMES D. RUSH, APC

David S. Harris
Attorneys for Plaintiffs

EXHIBIT 1



OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION

ORDER NO. 5-2001

REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

PUBLIC HOUSEKEEPING INDUSTRY

Effective July 1, 2003 as amended

*Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations,
effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006*

This Order Must Be Posted Where Employees Can Read It Easily

● Please Post With This Side Showing ●

OFFICIAL NOTICE

Effective July 1, 2003 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations,
effective January 1, 2007, pursuant to AB 1835, Chapter 230, Statutes of 2006



INDUSTRIAL WELFARE COMMISSION ORDER NO. 5-2001 REGULATING WAGES, HOURS AND WORKING CONDITIONS IN THE PUBLIC HOUSEKEEPING INDUSTRY

TAKE NOTICE: To employers and representatives of persons working in industries and occupations in the State of California: The Department of Industrial Relations amends and republishes the minimum wage and meals and lodging credits in the Industrial Welfare Commission's Orders as a result of legislation enacted (AB 1835, Ch. 230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) The amendments and republishing make no other changes to the IWC's Orders.

1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis, except that:

(A) Except as provided in Sections 1,2,4,10, and 20, the provisions of this order shall not apply to student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners are exempted by the provisions of sections 2789 or 2884 of the Business and Professions Code;

(B) Provisions of sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption to those sections:

(1) Executive Exemption. A person employed in an executive capacity means any employee:

- (a) Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
- (b) Who customarily and regularly directs the work of two or more other employees therein; and
- (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
- (d) Who customarily and regularly exercises discretion and independent judgment; and
- (e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

- (a) Whose duties and responsibilities involve either:
 - (i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; or
 - (ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and
- (b) Who customarily and regularly exercises discretion and independent judgment; and
- (c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or
- (d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
- (e) Who executes under only general supervision special assignments and tasks; and
- (f) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption. A person employed in a professional capacity means any employee who meets *all* of the following requirements:

- (a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or
- (b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:
 - (i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged

course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in paragraph (a).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this Wage Order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subsection unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above, shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(iii) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(iv) Nothing in this subparagraph shall exempt the occupations set forth in clauses (i), (ii), and (iii) from meeting the requirements of subsection 1(B)(3)(a)-(d), above.

(h) Except as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if *all* of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

—The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

—The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.

—The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee's hourly rate of pay is not less than forty-one dollars (\$41.00). The Office of Policy, Research and Legislation shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.*

(i) The exemption provided in subparagraph (h) does not apply to an employee if *any* of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in *any* of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(C) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(D) The provisions of this order shall not apply to outside salespersons.

(E) Provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(F) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

2. DEFINITIONS

(A) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

* Pursuant to Labor Code section 515.5, subdivision (a)(4), the Office of Policy, Research and Legislation, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be \$49.77, effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at www.dir.ca.gov/IWC or by mail from the Department of Industrial Relations.

- (B) "Commission" means the Industrial Welfare Commission of the State of California.
- (C) "Division" means the Division of Labor Standards Enforcement of the State of California.
- (D) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.
- (E) "Employ" means to engage, suffer, or permit to work.
- (F) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and
- (1) who does not use his or her own funds to purchase requisite supplies, and
 - (2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and
 - (3) who does not have a business license where applicable.
- (G) "Employees in the Healthcare Industry" means any of the following:
- (1) Employees in the healthcare industry providing patient care; or
 - (2) Employees in the healthcare industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or
 - (3) Employees in the healthcare industry working primarily or regularly as a member of a patient care delivery team
 - (4) Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.
- (H) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.
- (I) "Healthcare Emergency" consists of an unpredictable or unavoidable occurrence at unscheduled intervals relating to healthcare delivery, requiring immediate action.
- (J) "Healthcare Industry" is defined as hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating twenty-four (24) hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis.
- (K) "Hours worked" means 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, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.
- (L) "Minor" means, for the purpose of this Order, any person under the age of 18 years.
- (M) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.
- (N) "Personal attendant" includes baby sitters and means any person employed by a non-profit organization covered by this order to supervise, feed or dress a child or person who by reason of advanced age, physical disability or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.
- (O) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.
- (P) "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:
- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
 - (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
 - (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
 - (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
 - (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
 - (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
 - (7) Establishments providing veterinary or other animal care services.
- (Q) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.
- (R) "Split shift" means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.
- (S) "Teaching" means, for the purpose of section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.
- (T) "Wages" include all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
- (U) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.
- (V) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

(2) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care

system and who, in either case, are receiving 24 hour residential care, may, without violating any provision of this section, be compensated as follows:

(a) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek.

(b) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 48 hours in the workweek.

(c) An employee shall be compensated at two (2) times the employee's regular rate of pay for all hours in excess of 16 in a workday.

(d) No employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work. Time spent sleeping shall not be included as hours worked.

(e) Section (A)(2) above shall apply to employees of 24 hour non-medical out of home licensed residential facilities of 15 beds or fewer for the developmentally disabled, elderly, and mentally ill adults.

This section, (3)(A)(2)(e), shall sunset on July 1, 2005.

(B) Alternative Workweek Schedules

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to twelve (12) hours a day or beyond 40 hours per week shall be paid at one and one-half (1½) times the employee's regular rate of pay. All work performed in excess of twelve (12) hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) If an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(3) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(4) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(5) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this Section and who is unable to work the alternative workweek schedule established as the result of that election.

(6) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(7) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Office of Policy, Research and Legislation by January 1, 2001, in accordance with the requirements of Section C below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 1999, that alternative workweek was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. An employee may revoke his or her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section. Notwithstanding the foregoing, if a health care industry employer implemented a reduced rate for 12 hour shift employees in the last quarter of 1999 and desires to re-implement a flexible work arrangement that includes 12 hour shifts at straight time for the same work unit, the employer must pay a base rate to each affected employee in the work unit that is no less than that employee's base rate in 1999 immediately prior to the date of the rate reduction.

(8) Notwithstanding the above provisions regarding alternative workweek schedules, no employer of employees in the healthcare industry shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order a regularly scheduled alternative workweek schedule that includes work days exceeding ten (10) hours but not more than 12 hours within a 40-hour workweek without the payment of overtime compensation, provided that:

(a) An employee who works beyond 12 hours in a workday shall be compensated at double the employee's regular rate of pay for all hours in excess of (12);

(b) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1½) times the employee's regular rate of pay for all hours over 40 hours in the workweek;

(c) Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift.

(d) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(e) Any employer who instituted an alternative workweek schedule pursuant to this subsection shall make a reasonable effort to find another work assignment for any employee who participated in a valid election prior to 1998 pursuant to the provisions of Wage Orders 4 and 5 and who is unable to work the alternative workweek schedule established.

(f) An employer engaged in the operation of a licensed hospital or in providing personnel for the operation of a licensed hospital who institutes, pursuant to a valid order of the Commission, a regularly scheduled alternative workweek that includes no more than three (3) 12-hour workdays, shall make a reasonable effort to find another work assignment for any employee who participated in the vote which authorized the schedule and is unable to work the 12-hour shifts. An employer shall not be required to offer a different work assignment to an employee if such a work assignment is not available or if the employee was hired after the adoption of the 12 hour, three (3) day alternative workweek schedule.

(9) No employee assigned to work a 12 hour shift established pursuant to this Order shall be required to work more than 12 hours in any 24 hour period unless the Chief Nursing Officer or authorized executive declares that:

(a) A "healthcare emergency", as defined, exists in this Order, and

(b) All reasonable steps have been taken to provide required staffing, and

(c) Considering overall operational status needs, continued overtime is necessary to provide required staffing.

(10) Provided further that no employee shall be required to work more than 16 hours in a 24-hour period unless by voluntary mutual agreement of the employee and employer, and no employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off-duty immediately following the 24 consecutive hours of work.

(11) Notwithstanding subsection (B)(9) above, an employee may be required to work up to 13 hours in any 24-hour period if the employee scheduled to relieve the subject employee does not report for duty as scheduled and does not inform the employer more than two (2) hours in advance of that scheduled shift that he/she will not be appearing for duty as scheduled.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. However, where an alternative workweek schedule was adopted between October 1, 1999 and October 1, 2000, a new secret ballot election to repeal that alternative workweek schedule shall not be subject to the 12-month interval between elections. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this subsection shall be subject to Labor Code section 98 et seq.

(D) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated any provision of this section if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of work, a work period of 14 consecutive days is accepted in lieu of the workweek of seven (7) consecutive days for purposes of overtime computation and if, for any employment in excess of 80 hours in such 14 day period, the employee receives compensation at a rate not less than one and one-half (1½) times the regular rate at which the employee is employed.

(E) This section does not apply to organized camp counselors who are not employed more than 54 hours and not more than six (6) days in any workweek except under the conditions set forth below. This section shall also not apply to personal attendants as defined in Section 2 (N), nor to resident managers of homes for the aged having less than eight (8) beds; provided that persons employed in such occupations shall not be employed more than 40 hours nor more than six (6) days in any workweek, except under the following conditions:

In the case of emergency, employees may be employed in excess of forty (40) hours or six (6) days in any workweek provided the employee is compensated for all hours in excess of 40 hours and days in excess of six (6) days in the workweek at not less than one and one-half (1½) times the employee's regular rate of pay. However, regarding organized camp counselors, in case of emergency they may be employed in excess of 54 hours or six (6) days, provided that they are compensated at not less than one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of 54 hours and six (6) days in the workweek.

(F) One and one-half (1½) times a minor's regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsection (A), (B), (C), or (D) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties. Refer to California Labor Code sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

(G) An employee may be employed on seven (7) workdays in a workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(H) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(I) The provisions of this section are not applicable to employees whose hours of service are regulated by:

(1) The United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers, or

(2) Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 and following sections, regulating hours or drivers.

(J) The daily overtime provisions of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for 24 hours shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

(K) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(L) Except as provided in subsections (F) and (K), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(M) Notwithstanding subsection (L) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (K) above) shall apply, unless the agreement expressly provides otherwise.

(N) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that make up work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he or she will be requesting make up time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the make up work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this Section. While an employer may inform an employee of this make up time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this Section.

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than seven dollars and fifty cents (\$7.50) per hour for all hours worked, effective January 1, 2007, and not less than eight dollars (\$8.00) per hour for all hours worked, effective January 1, 2008, except:

LEARNERS. Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, 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.

(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities;

or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division. (See California Labor Code, Sections 1191 and 1191.5.)

7. RECORDS

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

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

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

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

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

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

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

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

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

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

8. CASH SHORTAGE AND BREAKAGE

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, haircutting scissors, combs, blowers, razors, and eyebrow tweezers. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2007	Effective January 1, 2008
Lodging:		
Room occupied alone	\$35.27 per week	\$37.63 per week
Room shared	\$29.11 per week	\$31.06 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	\$423.51 per month	\$451.89 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$626.49 per month	\$668.46 per month
Meals:		
Breakfast	\$2.72	\$2.90
Lunch.....	\$3.72	\$3.97
Dinner.....	\$5.00	\$5.34

(D) Meals evaluated, as part of the minimum wage, must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall

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

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

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

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

(E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met:

(1) (a) The residential care employee eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or

(b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

(2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

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

(C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS

(See California Labor Code, Section 1174(a))

19. INSPECTION

(See California Labor Code, Section 1174)

20. PENALTIES

(See Labor Code, Section 1199)

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

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

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

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

(B) The Labor Commissioner may also issue citations pursuant to Labor Code § 1197.1 for non-payment of wages for overtime work in violation of this order.

21. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Division of Labor Standards Enforcement. A listing of the DLSE offices is on the back of this wage order. Look in the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES

The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at:
P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS

El Departamento de Relaciones Industriales confeccionara un resumen sobre los requisitos de salario y horario de esta Disposicion en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envie por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.

其他文字的摘錄

工業關係處將摘錄本規則中有關工資和工時的規定，用西班牙文、中文印出。其他文字如有需要，也將同樣辦理。如果您有需要，可以來信索閱，請寄到：

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

Division of Labor Standards Enforcement (DLSE)

BAKERSFIELD

Division of Labor Standards Enforcement
7718 Meany Ave.
Bakersfield, CA 93308
661-587-3060

REDDING

Division of Labor Standards Enforcement
2115 Civic Center Drive, Room 17
Redding, CA 96001
530-225-2655

SAN JOSE

Division of Labor Standards Enforcement
100 Paseo De San Antonio, Room 120
San Jose, CA 95113
408-277-1266

EL CENTRO

Division of Labor Standards Enforcement
1550 W. Main St.
El Centro, CA 92643
760-353-0607

SACRAMENTO

Division of Labor Standards Enforcement
2031 Howe Ave, Suite 100
Sacramento, CA 95825
916-263-1811

SANTA ANA

Division of Labor Standards Enforcement
605 West Santa Ana Blvd., Bldg. 28, Room 625
Santa Ana, CA 92701
714-558-4910

FRESNO

Division of Labor Standards Enforcement
770 E. Shaw Ave., Suite 222
Fresno, CA 93710
559-244-5340

SALINAS

Division of Labor Standards Enforcement
1870 N. Main Street, Suite 150
Salinas, CA 93906
831-443-3041

SANTA BARBARA

Division of Labor Standards Enforcement
411 E. Canon Perdido, Room 3
Santa Barbara, CA 93101
805-568-1222

LONG BEACH

Division of Labor Standards Enforcement
300 Oceangate, 3rd Floor
Long Beach, CA 90802
562-590-5048

SAN BERNARDINO

Division of Labor Standards Enforcement
464 West 4th Street, Room 348
San Bernardino, CA 92401
909-383-4334

SANTA ROSA

Division of Labor Standards Enforcement
50 "D" Street, Suite 360
Santa Rosa, CA 95404
707-576-2362

LOS ANGELES

Division of Labor Standards Enforcement
320 W. Fourth St., Suite 450
Los Angeles, CA 90013
213-620-6330

SAN DIEGO

Division of Labor Standards Enforcement
7575 Metropolitan, Room 210
San Diego, CA 92108
619-220-5451

STOCKTON

Division of Labor Standards Enforcement
31 E. Channel Street, Room 317
Stockton, CA 95202
209-948-7771

OAKLAND

Division of Labor Standards Enforcement
1515 Clay Street, Room 801
Oakland, CA 94612
510-622-3273

SAN FRANCISCO

Division of Labor Standards Enforcement
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102
415-703-5300

VAN NUYS

Division of Labor Standards Enforcement
6150 Van Nuys Boulevard, Room 206
Van Nuys, CA 91401
818-901-5315

SAN FRANCISCO – HEADQUARTERS

Division of Labor Standards Enforcement
455 Golden Gate Ave. 9th Floor
San Francisco, CA 94102
415-703-4810

EMPLOYERS: Do not send copies of your alternative workweek
election ballots or election procedures.

Prevailing Wage Hotline (415) 703-4774

Only the results of the alternative workweek election
shall be mailed to:

Department of Industrial Relations
Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

EXHIBIT 2

THE
MEADOWS
OF NAPA VALLEY

2012

Employee Handbook



May 2012

The Meadows of Napa Valley ♦ 1800 Atrium Parkway ♦ Napa, CA

PAY SCHEDULE

Meadows employees are paid on a bi-weekly pay schedule, which means that employees will receive 26 paychecks in a 12 month period. A payroll calendar will be issued upon hire. If a pay day falls on a holiday, paychecks will be mailed on the preceding workday.

PAYCHECK DISTRIBUTION/DIRECT DEPOSIT

Employees are encouraged to have their paycheck deposited directly to their bank account through automatic deposit. Direct Deposit offers safety of their paycheck, as well as access to their funds the morning of payday. All employees have the choice of having their paychecks mailed to their home or directly deposited to their bank account. No payroll advances or early paychecks will be authorized under any circumstances. For further information, contact the Business Office or Human Resources Department.

OVERTIME

The Meadows reserves the right to assign overtime work in a manner most efficient to its operation and to the service requirements of its residents. Overtime, for non-exempt employees, will be compensated at one and one-half the regular pay rate on all assigned duty in excess of eight (8) hours in any one workday, forty (40) hours in a work week, or all hours worked on the seventh day of one work week if the prior six (6) days were worked. Overtime pay at the rate of double the employee's regular rate will be provided for all hours worked in excess of twelve (12) hours in one workday and in excess of eight (8) hours on the seventh day of one work week if the prior six (6) days were worked, remembering the basic workweek is from Sunday 12:01 a.m. through Saturday 12 midnight.

Please keep in mind that overtime compensation applies only to hours worked. For example, a paid holiday not worked will not be credited as a work day for computing overtime. **No overtime hours will be worked without prior supervisory authorization.** An employee who works unauthorized overtime will face disciplinary action up to and including termination of employment.

Employees may make up missed work time without overtime, if make-up time is performed during the same forty 40 hour work week and if no more than eleven (11) hours are worked in a single day, and is first approved by their supervisor. Employees must provide a signed written request for each occasion that he/she desires make up time.

TIME CARDS

The Meadows is required to maintain an accurate record of hours worked by all non-exempt employees. Wages are computed directly from the time record. **Employees are required to clock in and out for each shift, and meal break period.** Employees are to clock in no earlier than five (5) minutes before their shift begins and out no later than five (5) minutes after the end of the shift unless authorized by their supervisor. Shifts will be calculated according to the day in which a continuous shift ends for calculating overtime, holiday pay, etc. Employees are expected to be at their work area at the start of the shift. If an employee misses a punch on their time card, they are required to fill out a "missed punch" slip indicating the reason for the missed punch and submit it, in a timely manner, for supervisor approval. If missed punches become excessive, employees will be subject to disciplinary action, up to and including termination of employment.

MEAL AND BREAK PERIODS

Employees are **required** to take meal and break periods. Meal and break periods are to be scheduled at times that will not interfere with the efficient operation of the Meadows. **Non-exempt employees are required to clock in and out for meal periods.**

Employees are required to take at least a thirty (30) minute unpaid meal period for each shift of more than five hours, unless six hours of work will complete the shift and the meal period may be waived by mutual consent of both the employer and employee. Employees may not waive their meal period for shifts over six hours. Employees working for more than ten (10) hours may take a second thirty (30) minute meal period per day, unless the work period is less than twelve (12) hours, then the second meal period may be waived by written mutual consent.

Employees will be given two 15-minute break periods with pay during a regular eight-hour shift. Break periods are not allowed to be added to the meal period. If less than eight (8) hours is worked, a 15-minute break will be given for every four (4) hours worked. Employees may not leave the premises during their 15-minute break. **Employees may be subject to disciplinary action up to and including termination of employment if break periods are not taken.**

MEAL PROGRAM

The Rebekah's Café, is open for all employees Monday through Friday from 11:00 a.m. to 2:00 p.m. Employees' Family and/or friends are permitted to use the cafeteria only when the employee is present. Hot meal service is provided for lunch; Ala carte and snack items are available during all open hours. The vending machines, located in employee break rooms, are accessible 24 hours a day.

Employees can purchase meal tickets for cash or through payroll deduction at the Atrium Reception Desk. For more details, contact the Human Resources Department.



NON-ACCEPTANCE OF GRATUITIES/ BEQUESTS

Employees and/or their relatives are not permitted to accept gratuities, loans, bargain sales, non-cash items, gifts or bequests under any circumstances from residents, residents' relatives, firms, or individuals (including prospective residents) with which The Meadows has actual or potential relationships. Violation of this policy will result in disciplinary action up to and including termination of employment. Accepting gratuities, loans, bargain sales, or bequests upon resignation will make an employee ineligible for rehire.

EXHIBIT 3



ENTERED

MISSED PUNCH REQUEST FORM

EMPLOYEE NAME:

Coral McQueen

EMPLOYEE TITLE:

EMPLOYEE SHIFT:

am

MISSED PUNCHES

DATE	TIME-IN	TIME-OUT LUNCH BREAK	TIME-IN LUNCH BREAK	TIME-OUT
3/7/13		10am	1030am	

Employee Signature: X

Supervisor Approval: JS

Explanation for Missed Punch: _____

MISSED PUNCH REQUEST FORM

EMPLOYEE NAME:

Coral McQueen

EMPLOYEE TITLE:

EMPLOYEE SHIFT:

am

MISSED PUNCHES

DATE	TIME-IN	TIME-OUT LUNCH BREAK	TIME-IN LUNCH BREAK	TIME-OUT
3/15/13		2m	3m	

Employee Signature:

X

Supervisor Approval:

N

Explanation for Missed Punch:

TIMECARD

McQueen, Coral Rae 3/03/2013-3/16/2013

Date	Pay Code	Amount	In	Out	Transfer	Out	In	Transfer	Out	Shift	Daily	Cumulative
Sat 3/02												
Sun 3/03	Napa On-Call Pager 3.0		8:21AM	3:34PM		4:15PM			4:29PM	7.5	7.5	7.5
Mon 3/04			7:27AM	1:01PM						5.5		
Tue 3/05			3:53PM	5:53PM						2.0	7.5	15.0
Tue 3/05			7:02AM	2:37PM		3:08PM			3:20PM	7.75	7.75	22.75
Wed 3/06			7:05AM	10:00AM		10:30AM			1:04PM	5.5	5.5	28.25
Thu 3/07			6:03AM	12:50PM		1:20PM			2:34PM	8.0	8.0	36.25
Fri 3/08			6:30AM	1:30PM		2:00PM			3:00PM	8.0	8.0	44.25
Sat 3/09												
Sun 3/10	Napa On-Call Pager 3.0		6:30AM	12:30PM		1:30PM			2:56PM	7.5	7.5	51.75
Sun 3/10			7:03AM	2:21PM		2:57PM			3:35PM	8.0	8.0	59.75
Mon 3/11												
Tue 3/12			6:33AM	8:24AM		9:24AM			3:00PM	7.5	7.5	67.25
Wed 3/13			12:00AM	2:00AM						2.0	2.0	69.25
Thu 3/14			7:19AM	10:30AM		11:00AM			2:00PM			
Fri 3/15			9:00PM	4:50PM		5:20PM			8:30PM	11.25	11.25	80.5
Fri 3/15			6:54AM	1:23PM		1:55PM			2:03PM	6.5	6.5	87.0
Sat 3/16												
Sun 3/17												

Totals

Account	Pay Code	Amount	Wages
363303/36/280/655/0/0/0	OT	7.5	256.16
363303/36/280/655/0/0/0	REGULAR	79.5	1,810.22
363303/36/280/655/0/0/0	Napa On-Call ...	6.0	300.00

Schedule

Date	Start Time	End Time	Pay Code	Amount
Sun 3/03				
Mon 3/04				
Tue 3/05				
Wed 3/06				
Thu 3/07				
Fri 3/08				

Earnings Statement
Coral Rae McQueen
1499 Hemlock Street
Napa, CA 94559

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
KMS	1630	12-1	03/22/2013	03/16/2013	363303	2	2,366.38		00120105	Voucher	

Earnings	Rate	Hours	This Period
Regular		79.50	1,810.22
Overtime		7.50	256.16
ONC		0.00	300.00
Gross Pay			\$2,366.38

Deductions	Statutory	
	Federal Income Tax	-262.65
	Medicare	-33.51
	Social Security	-143.32
	75 SUI/SDI	-23.11
	CA Worked In State Income Tax	-96.52
	Others	
	Meals	-16.00
	403B\$ Lincoln	-100.00
	Pretax Health	-49.59
	Pretax Dental	-5.27
	Life Insurance	-1.20
	Checking	-1,635.21
	Net Pay	

Memos	
Match Fiscal	47.33
On-Call Pager	6.00

MISSED PUNCH REQUEST FORM

EMPLOYEE NAME: Coral McQueen

EMPLOYEE TITLE: Supervisor

EMPLOYEE SHIFT: an

MISSED PUNCHES

DATE	TIME-IN	TIME-OUT LUNCH BREAK	TIME-IN LUNCH BREAK	TIME-OUT
9/27/10		11am	1130am	

Employee Signature: _____

Supervisor Approval: *JS*

Explanation for Missed Punch: _____

TIMECARD

McQueen, Coral Rae 9/19/2010-10/02/2010

Date	Pay Code	Amount	In	Out	Transfer	Out	In	Transfer	Out	Shift	Daily	Cumulative
Sat 9/18												
Sun 9/19	Napa On-Call Pager 1.0		6:34AM	10:26AM		10:47AM			11:33AM	8.0	8.0	8.0
Mon 9/20			12:03PM	3:00PM								
Mon 9/20			6:55AM	12:44PM		1:16PM			6:42PM	8.0	12.25	20.25
Tue 9/21			6:58PM	7:41PM						12.25	12.25	20.25
Wed 9/22			9:39AM	12:42PM		1:05PM			2:33PM	5.25	5.25	25.5
Wed 9/22			3:05PM	4:04PM						5.25	5.25	25.5
Thu 9/23			6:34AM	12:27PM		12:40PM			2:15PM	8.75	8.75	34.25
Thu 9/23			2:46PM	3:46PM						8.75	8.75	34.25
Fri 9/24			6:56AM	9:29AM		10:04AM			3:37PM	15.0	15.0	49.25
Fri 9/24			3:54PM	9:03PM		9:43PM			11:15PM			49.25
Sat 9/25												49.25
Sun 9/26	Napa On-Call Pager 1.0		6:35AM	9:49AM		10:05AM			11:00AM			61.0
Mon 9/27			11:30AM	1:21PM		1:43PM			6:47PM	11.75	11.75	61.0
Tue 9/28			2:58AM	6:10AM		6:26AM			11:15AM			72.75
Tue 9/28			11:49AM	1:46PM		2:01PM			3:10PM	11.75	11.75	72.75
Wed 9/29			6:33AM	10:07AM		10:21AM			12:00PM	8.0	8.0	80.75
Wed 9/29			12:30PM	3:00PM								
Thu 9/30			6:30AM	11:52AM		12:06PM			1:32PM	8.25	8.25	89.0
Thu 9/30			2:03PM	3:14PM								
Fri 10/01			5:18AM	10:00AM		10:30AM			11:36AM	8.0	8.0	97.0
Fri 10/01			11:48AM	1:44PM								97.0
Sat 10/02												
Sun 10/03												

Totals

Account	Pay Code	Amount	Wages
606936/36/780/655/0/0/0	REGULAR	77.25	1,519.51
606936/36/780/655/0/0/0	DOUBLE	3.25	127.86
606936/36/780/655/0/0/0	Napa On-Call ...	2.0	100.00
606936/36/780/655/0/0/0	OT	16.5	486.83

Earnings Statement
Coral Rae McQueen
1499 Hemlock Street
Napa, CA 94559

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
KMS	1630	40-1	10/08/2010	10/02/2010	606936	2	2,234.20		00400092	Voucher	

Earnings	Rate	Hours	This Period
Regular		77.25	1,519.51
Overtime		16.50	486.83
ONC		0.00	100.00
Double Time		3.25	127.86
Gross Pay			\$2,234.20

Deductions	Statutory	
	Federal Income Tax	-324.54
	Medicare	-31.41
	Social Security	-134.31
	75 SUI/SDI	-23.83
	CA Worked In State Income Tax	-112.72
	Others	
	Pretax Health	-38.37
	Pretax Dental	-29.41
	Checking	-1,539.61
Net Pay		

Memos

On-Call Pager	2.00
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MISSED PUNCH REQUEST FORM

EMPLOYEE NAME:

Coral McQueen

EMPLOYEE TITLE:

EMPLOYEE SHIFT:

NSOL

MISSED PUNCHES

DATE	TIME-IN	TIME-OUT LUNCH BREAK	TIME-IN LUNCH BREAK	TIME-OUT
9/28/13	10 ³⁰ pm.	—	—	7 ⁰⁰ -am

Employee Signature: _____

Supervisor Approval: _____

Explanation for Missed Punch:

forget to clock in when I
came on shift.
NO lunch because there wasn't a staff to relieve
me for my duties

TIMECARD

McQueen, Coral Rae 9/15/2013-9/28/2013

Date	Pay Code	Amount	In	Out	Transfer	Out	In	Transfer	Out	Shift	Daily	Cumulative
Sat 9/14												
Sun 9/15	Napa On-Call Pager 1.0		6:00AM	1:00PM		1:00PM	1:30PM		4:00PM	7.5	7.5	7.5
Mon 9/16			7:09AM	1:01PM		1:01PM	1:31PM		2:30PM	6.75	6.75	7.5
Tue 9/17												14.25
Wed 9/18			8:30AM	12:30PM		12:30PM	1:00PM		4:30PM	7.5	7.5	14.25
Thu 9/19			8:37AM	3:43PM		3:43PM	4:14PM		4:38PM	7.75	7.75	21.75
Fri 9/20			7:22AM	11:30AM		11:30AM	12:00PM		3:20PM	7.5	7.5	29.5
Sat 9/21												37.0
Sun 9/22	Napa On-Call Pager 1.0		8:30AM	12:00PM		12:00PM	12:30PM		4:30PM	7.5	7.5	37.0
Mon 9/23												44.5
Tue 9/24			8:30AM	12:00PM		12:00PM	12:30PM		4:30PM	7.5	7.5	44.5
Wed 9/25			8:08AM	3:50PM		3:50PM	4:20PM		4:33PM	7.75	7.75	52.0
Thu 9/26												59.75
Fri 9/27			4:50AM	10:40AM		10:40AM	11:11AM		1:01PM	7.75	7.75	59.75
Sat 9/28	OT 1.0		10:30PM	11:45PM		11:45PM	12:15AM		7:00AM	8.0	15.75	75.5
Sun 9/29												

Totals

Account	Pay Code	Amount	Wages
363303/36/280/655/0/0/0	DOUBLE	3.75	170.78
363303/36/280/655/0/0/0	OT	4.0	136.62
363303/36/280/655/0/0/0	Napa On-Call ...	2.0	100.00
363303/36/280/655/0/0/0	REGULAR	68.25	1,554.05

Schedule

Date	Start Time	End Time	Pay Code	Amount
Sun 9/15				
Mon 9/16				
Tue 9/17				
Wed 9/18				
Thu 9/19				

Earnings Statement
Coral Rae McQueen
1499 Hemlock Street
Napa, CA 94559

Co	File#	Wk.	Pay Date	Period End	Paid Dept.	Paid Clock	Gross Pay	Net Pay	Check #	Chk/Vcr	Void
KMS	1630	40-1	10/04/2013	09/28/2013	363303	2	1,961.45		00400118	Voucher	

Earnings	Rate	Hours	This Period
Regular		68.25	1,554.05
Overtime		4.00	136.62
ONC		0.00	100.00
Double Time		3.75	170.78
Gross Pay			\$1,961.45

Deductions	Statutory	
	Federal Income Tax	-173.63
	Medicare	-27.65
	Social Security	-118.21
	75 SUI/SDI	-19.06
	CA Worked In State Income Tax	-58.29
	Others	
	403B\$ Lincoln	-100.00
	Pretax Health	-49.59
	Pretax Dental	-5.27
	Life Insurance	-1.20
	Checking	-1,408.55
Net Pay		

Memos	
Match Fiscal	39.23
On-Call Pager	2.00

EXHIBIT 4

FACILITY: The Meadows of Napa Valley
POLICY: MEAL AND REST BREAK POLICY
DEPARTMENT: HUMAN RESOURCES

Effective Date: January 1, 2008 **Revision Date:**

PURPOSE: To provide specific periods of time when employees are relieved of all duty paid or unpaid per California law. When employees clock in and out as required, the Meadows is able to confirm compliance for payroll purposes. The Meadows is committed to ensuring that every employee receives breaks from their work duties.

POLICY: It is the responsibility of every employee to clock in and clock out for all meal and rest breaks.

Meal Break: California law requires employers to provide a meal break of at least one half-hour (30 minutes) for every work period of more than five hours. If six hours of work complete the day's work, the employee may voluntarily choose not to take the meal break. Meal breaks may be unpaid if (1) they are at least 30 minutes long, (2) the employee is relieved of all duty, and (3) the employee is free to leave the premises. Employers are required to provide a second meal break of not fewer than 30 minutes for all workdays in which an employee works more than 10 hours.

Rest Break: California law requires employers to provide rest breaks at the rate of not less than 10 consecutive minutes for each four (4) hours (or major portion thereof) worked, occurring as near as possible to the middle of the work period. **At the Meadows,** employees will be given two 15 minute break periods with pay during a regular eight-hour shift. Break periods are not allowed to be added to the meal period. If less than eight hours is worked, a 15 minute break will be given for every four (4) hours worked. Employees may not leave the premises during their 15 minute break.

PROCEDURES: Employees are required to **clock out** for no less than one half-hour (30 minutes) meal break for every work period of more than five hours, and **clock back in** after the full 30 minutes meal break. Employees are allowed an extra "5 minutes window" in which to clock back in.

If the employee continues a pattern of failing to follow policy as required by state law, the employee will be subject to disciplinary action:

1. Verbal Warning
2. Verbal documented warning
3. Written warning
4. Final Warning
5. Suspension

All disciplinary actions will be placed in the employees personnel file. After 90 days of good standing, disciplinary actions related to breaks will be revoked. The Meadows reserves the right to determine whether discipline or termination is appropriate.

EXHIBIT 5



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Edmund G. Brown Jr. • SECRETARY David Lanier

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Investment Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

June 26, 2014

CERTIFIED MAIL

North Bay Law Group
116 East Blithedale, Suite 2
Mill Valley, CA 94941

RE: Employer: Odd Fellows Home of California Attn: Ray Link
RE: Employee(s): Coral McQueen
RE: LWDA No: 16666

This is to inform you that the Labor and Workforce Development Agency (LWDA), in care of the Division of Labor Standards Enforcement (DLSE), received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked May 23, 2014, and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code." Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

Consequently, you must advise DLSE of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement. Please be certain to reference the above LWDA assigned case number in any future correspondence.

Sincerely,

Mark Woo-Sam
General Counsel

Cc: Odd Fellows Home of California Attn: Ray Link
14414 Oak Street Suite B
Saratoga, CA 95070