

Carney R. Shegerian, State Bar No. 150461
CShegerian@Shegerianlaw.com
Anthony Nguyen, State Bar No. 259154
ANGuyen@Shegerianlaw.com
Cheryl A. Kenner, State Bar No. 305758
CKenner@Shegerianlaw.com
SHEGERIAN & ASSOCIATES, INC.
145 South Spring Street, Suite 400
Los Angeles, California 90012
Telephone Number: (310) 860-0770
Facsimile Number: (310) 860-0771

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Superior Court of California
County of Los Angeles

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Sherri R. [Signature], Executive Officer/Clerk
by [Signature], Deputy
Steven Drew

Attorneys for Plaintiffs AMY SHIELL and
CECILIA MENDOZA and all others similarly
situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

AMY SHIELL, CECILIA MENDOZA,
individually, and on behalf of all others
similarly situated and aggrieved,

Plaintiffs,

vs.

HELPERPRO SOLUTION GROUP -
LAGUNA HILLS DBA HELPERPRO
STAFFING SOLUTIONS, a California
Corporation; MSC HEALTHCARE
MANAGEMENT INC., a California
Corporation; YMX ENTERPRISE GROUP
LLC, a California Limited Liability Company;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: **20STCV14558**
**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**
(1) FAILURE TO PROVIDE MEAL PERIODS;
(2) FAILURE TO PROVIDE REST BREAKS;
(3) FAILURE TO PAY MINIMUM WAGES;
(4) FAILURE TO PAY OVERTIME WAGES;
**(5) FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS-RELATED
EXPENSES;**
**(6) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
**(7) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
**(8) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW ("UCL"),
CAL. BUS. & PROF. CODE § 17200, ET
SEQ.; AND**
**(9) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS'
GENERAL ACT ("PAGA"), §§ 2698, ET
SEQ.**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiffs AMY SHIELL (“SHIELL”) and CECILIA MENDOZA (“MENDOZA”) (collectively,
3 “Plaintiffs”), on behalf of themselves and all others similarly situated and aggrieved, by and through their
4 attorneys, Shegerian & Associates, Inc., hereby file this Class Action and PAGA Representative Action
5 Complaint against Defendants HELPERPRO SOLUTION GROUP—LAGUNA HILLS DBA
6 HELPERPRO STAFFING SOLUTIONS, a California Corporation; MSC HEALTHCARE
7 MANAGEMENT INC., a California Corporation; YMX ENTERPRISE GROUP LLC, a California
8 Limited Liability Company (“Defendants”); and DOES 1 through 100 inclusive, (collectively,
9 “Defendants”), and states as follows:

10
11 **I. INTRODUCTION**

12 1. Plaintiffs bring this class and representative action on behalf of themselves and on behalf
13 of all aggrieved persons and a class defined as all misclassified independent contractor Certified Nursing
14 Assistants (“CNAs”) who worked for HELPERPRO SOLUTION GROUP—LAGUNA HILLS DBA
15 HELPERPRO STAFFING SOLUTIONS and/or MSC HEALTHCARE MANAGEMENT INC and/or
16 YMX ENTERPRISE GROUP LLC in California at any time during the time period beginning four years
17 prior to the filing of this Complaint through the present (“Class Period”).

18 2. As more fully set forth herein, Defendants intentionally misclassified employees as
19 independent contractors; failed to provide off-duty meal periods and rest breaks to their California CNAs
20 in accordance with California Labor Code section 226.7 and section 11(a) of the Industrial Welfare
21 Commission’s (“IWC”) Industrial Wage Order Nos. 4-2001 and 5-2001; failed to pay all wages owed
22 upon during employment and upon separation, specifically wages including, but not limited to, minimum
23 wages, overtime wages, and premium pay; failed to reimburse all necessary, business-related expenses,
24 and failed to issue timely and accurate wage statements to their CNAs; and violated California’s Unfair
25 Competition Law, Business and Professions Code, section 17200, *et seq.*

26 3. Defendants supply its independent contractor Certified Nursing Assistants to local
27 hospitals and care facilities.

28 4. Defendants’ policy and practice is to deny earned wages, including premium and overtime

1 pay, to their misclassified hourly, nonexempt CNA employees at Defendants' locations in California.
2 Defendants do not provide their employees with legally compliant meal periods and rest breaks or
3 premium pay in lieu thereof. Defendants require their employees to be present and to perform work in
4 excess of eight (8) hours per day and/or forty (40) hours per work week by mandating that these
5 employees perform work off-the-clock including, but not limited to, performing work during meal
6 periods and rest breaks. Defendants do not provide minimum wages and overtime pay for this time.
7 These off-the-clock working periods are done for the sole benefit of Defendants and are a uniform policy
8 and practice in all of Defendants' location(s) in California. This illegal policy and practice have been in
9 effect by Defendants throughout the Class Period, but Defendants continue to require their misclassified
10 hourly, nonexempt CNA employees to work uncompensated.

11 5. Moreover, Defendants fail to timely compensate employees for all wages earned upon
12 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
13 wages earned, hours worked, and wage rates. For these reasons, Plaintiffs bring this action on behalf of
14 themselves and other misclassified hourly, nonexempt CNA employees of Defendants to recover unpaid
15 wages, overtime compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys'
16 fees and costs.

17 6. Defendants' deliberate failure to pay their misclassified hourly, nonexempt CNA
18 employees their earned wages and overtime compensation violates the California Labor Code and the
19 California Business & Professions Code.

20 7. Defendants' policy and practice is to refuse to reimburse the necessary, business-related
21 expenses Plaintiffs and Class Members incurred as a result of insufficient funds fees charged for
22 Defendants' bounced checks issued to Plaintiffs and Class Members for the payment of wages.
23 Defendants' policy is to not reimburse Plaintiffs and Class Members for these insufficient funds banking
24 fees in violation of Labor Code section 2802.

25 8. Plaintiffs bring a class action under the California Code of Civil Procedure section 382
26 against Defendants on behalf of all nonexempt misclassified hourly, nonexempt CNA employees of
27 Defendants in California for failing to provide compliant meal periods and rest breaks or premium pay
28 in lieu thereof, for unpaid minimum wages, unpaid overtime wages, failing to provide timely and accurate

1 wage statements, waiting time penalties, and other related penalties and damages under the California
2 Labor Code and California Business & Professions Code.

3 4 **II. JURISDICTION AND VENUE**

5 9. Venue lies properly with this Court, as it is the place where at least one Defendant resides,
6 is incorporated or has its principal place of business, or a substantial amount of the events which gave
7 rise to this suit occurred and/or a cause of action arose.

8 10. This Court has jurisdiction over this matter because Defendants are licensed to do
9 business in California, regularly conduct business in California, and committed and continue to commit
10 the unlawful acts alleged herein in California.

11 11. Venue is proper in this Court pursuant to California Code of Civil Procedure section
12 395.5. Defendants own and operate MSC HEALTHCARE MANAGEMENT INC. in Los Angeles
13 County, State of California, which is where Plaintiffs and some Class Members have worked and
14 continue to work for Defendants. All Defendants assigned Plaintiffs and Class Members to multiple
15 hospitals and care facilities located in the County of Los Angeles. Defendants' obligation to comply
16 with the California Labor Code and California Business & Professions Code and their liability for failing
17 to do so therefore arise in, among other counties, the County of Los Angeles.

18 19 **III. PARTIES**

20 12. Plaintiff SHIELL is and was a resident of the City of Los Angeles in Los Angeles County,
21 State of California. Plaintiff SHIELL was employed by Defendants as an hourly, nonexempt employee
22 in the position of Certified Nursing Assistant at multiple hospitals and care facilities assigned by
23 Defendants in California from approximately October 18, 2018 through approximately January 31,
24 2020. Plaintiff SHIELL typically worked three (3) to five (5) days per week for sixteen (16) hours per
25 day and generally, about fifty (50) or more hours per week. At the time of Plaintiff SHIELL'S
26 separation, Plaintiff SHIELL was earning \$18.00 per hour, but \$19.00 for weekend shifts.

27 13. Plaintiff MENDOZA is and was a resident of the City of Riverside in Riverside County,
28 State of California. Plaintiff MENDOZA was employed by Defendants as an hourly, nonexempt

1 employee in the position of Certified Nursing Assistant at multiple hospitals and care facilities assigned
2 by Defendants in California from approximately January 29, 2019 through approximately January 31,
3 2020. Plaintiff MENDOZA typically worked seven (7) days per week for sixteen (16) hours per day
4 and generally, over sixty (60) or more hours per week. At the time of Plaintiff MENDOZA'S separation,
5 Plaintiff MENDOZA was earning \$18.00 per hour, but \$19.00 for weekend shifts.

6 14. Defendant HELPERPRO SOLUTION GROUP - LAGUNA HILLS DBA HELPERPRO
7 STAFFING SOLUTIONS ("HELPERPRO") is a for-profit corporation incorporated in the State of
8 California with its principal place of business at 211 East Imperial Highway, Suite 105, Fullerton,
9 California 92835. Defendant is doing business in the State of California, operating in the State of
10 California, and is availing itself of the privileges and obligations associated therewith. Defendant
11 HELPERPRO'S California office is located at 211 East Imperial Highway, Suite 105, Fullerton,
12 California 92835.

13 15. Defendant MSC HEALTHCARE MANAGEMENT INC. ("MSC") is a for-profit
14 corporation incorporated in the State of California with its principal place of business at 3251 West 6th
15 Street, Suite 300A, Los Angeles, California 90020. Defendant is doing business in the State of
16 California, operating in the State of California, and is availing itself of the privileges and obligations
17 associated therewith. Defendant MSC'S California office is located at 3251 West 6th Street, Suite 300A,
18 Los Angeles, California 90020.

19 16. Defendant YMX ENTERPRISE GROUP LLC ("YMX") is a for-profit California limited
20 liability company organized in the State of California with its principal place of business at 211 East
21 Imperial Highway, Suite 105, Fullerton, California 92835. Defendant is doing business in the State of
22 California, operating in the State of California, and is availing itself of the privileges and obligations
23 associated therewith. Defendant YMX'S California office is located at 211 East Imperial Highway,
24 Suite 105, Fullerton, California 92835.

25 17. Defendants created the policies and procedures described herein and, at all times during
26 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

27 18. The practices and policies which are complained of by way of this Complaint are
28 enforced throughout the State of California, including Los Angeles County.

1 19. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct alleged herein, of the Defendants sued as Does 1-100, inclusive, but is
3 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
4 therefore sues these Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege
5 both the true names and capacities of the Doe Defendants when ascertained. Plaintiffs are informed and
6 believe, and thereon allege, that at all times mentioned herein, all Defendants, including Doe Defendants,
7 and each of them, were agents, servants, employees, successors in interest, and/or joint venturers of their
8 co-Defendants and were, as such, acting within the course, scope, and authority of said agency,
9 employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were ratified
10 by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a principal, was
11 negligent in the selection and hiring, training, and supervision of each and every other Defendant as an
12 agent, servant, employee, successor in interest, and/or joint venturer. Plaintiffs are informed and
13 believes that each Defendant acted in all respects pertinent to this action as the agent of the other
14 Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that
15 the acts of each Defendant are legally attributable to each of the other Defendant.

16
17 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 20. At all times herein relevant, Defendants employ and supply CNAs to hospitals and care
19 facilities in California whose purpose is to provide health-related/medical-related services to patients.

20 21. At all relevant times, Defendants have been, and continue to be, a “person” as that term
21 is defined under California Business & Professions Code section 17021 and California Labor Code
22 sections 1-29.5.

23 22. At all times herein relevant, Defendants employed Plaintiffs as hourly, nonexempt CNA
24 employees misclassified as independent contractors in California during the Class Period.

25 23. At all times relevant herein, Defendants employ hourly, nonexempt CNAs, such as
26 Plaintiffs, who work at multiple locations in California, altogether engaged in carrying out Defendants’
27 purpose of providing health-related/medical-related services. Defendants misclassified their CNAs as
28 independent contractors instead of hourly, nonexempt employees. At all times herein relevant, Plaintiffs

1 and Class Members were assigned to and required and permitted to work without pay while performing
2 tasks including, but not limited to: assisting patients with all daily activities, such as eating, bathing,
3 shaving, washing, dressing and changing, mobility and transfers in/out of wheelchairs in California.
4 Plaintiffs and Class Members were not properly compensated for this work.

5 24. At all times herein relevant, Defendants did not have a meal period policy, written or
6 verbal, that authorized and permitted Claimants to take meal periods or rest breaks.

7 25. Plaintiffs and Class Members were assigned to and required and permitted to work shifts
8 lasting over four (4) hours and were not authorized nor permitted to take a ten (10) minute rest break
9 during each shift or four (4) hour work period.

10 26. At all times herein relevant, Defendants failed to authorize and permit rest breaks during
11 the Class Period. Plaintiffs and Class Members were routinely required to work through rest breaks at
12 the direction of Defendants and/or Defendants' knowledge and acquiescence. Furthermore, due to
13 understaffing, Plaintiffs and Class Members' rest breaks are frequently interrupted by incoming requests
14 from doctors, nurses, and patients, at which time they must abandon their rest break and make
15 themselves available to resume work such as assisting patients with all daily activities, such as eating,
16 bathing, shaving, washing, dressing and changing, mobility and transfers in/out of wheelchairs;
17 accordingly, these rest breaks were on duty for which Defendants should have but did not compensate
18 Plaintiffs and Class Members with premium pay for missed rest breaks.

19 27. At all times herein relevant, Plaintiffs and Class Members were assigned to and required
20 to work for periods lasting in excess of five (5) hours and were not provided nor allowed to take thirty
21 (30) minute, uninterrupted, off-duty meal periods. Defendants employed a practice of auto-deducting
22 30-minute meal periods from Plaintiffs and Class Members' hours worked, regardless of whether meal
23 periods were taken and certainly not at the time meal periods were actually taken. Furthermore, due to
24 understaffing and poor scheduling, Plaintiffs' and Class Members' meal periods are frequently
25 interrupted by incoming requests from doctors, nurses, and patients, at which time they must abandon
26 their meal periods and make themselves available to resume work such as assisting patients with all
27 daily activities, such as eating, bathing, shaving, washing, dressing and changing, mobility and transfers
28 in/out of wheelchairs; accordingly, these meal periods were on duty for which Defendants should have

1 but did not compensate Plaintiffs and Class Members with premium pay for missed meal periods.
2 Moreover, Plaintiffs and Class Members often worked in excess of ten (10) hours without a second thirty
3 (30) minute meal period even though their first meal period was not taken.

4 28. At all times herein relevant, Plaintiffs and Class Members worked in excess of eight (8)
5 hours per workday or forty (40) hours per work week. Defendants failed to pay for all hours worked in
6 excess of eight (8) hours per day, and utterly failed to compensate for any overtime, let alone the proper
7 amount of overtime and overtime calculated based on the regular rate. Defendants failed to pay current
8 and former misclassified hourly, nonexempt CNA employees one and one-half times (1½) their regular
9 rate of pay for hours worked in excess of eight (8) hours per day or forty (40) hours per workweek.
10 Defendants also failed to pay their employees at a rate no less than twice the regular rate of pay for work
11 in excess of twelve (12) hours in one day or for all hours worked in excess of eight (8) hours on the
12 seventh consecutive day of work in a workweek.

13 29. Defendants regularly failed to pay their misclassified hourly, nonexempt CNA
14 employees the correct amount of and rate for overtime wages. Defendants have failed and continue to
15 fail to include all amounts in the regular rate of pay for purposes of calculating overtime. Unrelatedly,
16 Defendants fail to record all hours as overtime by failing to record all hours worked in a workday. This
17 work, done primarily for the employer's benefit, is time that hourly, nonexempt employees should be,
18 but were not compensated for, both straight hours and overtime hours worked in excess of forty (40)
19 hours in a week, hours worked in excess of eight (8) hours in a day, and for the first eight (8) hours
20 worked on the seventh consecutive day of work in a workweek.

21 30. Supervisors employed at Defendants' location(s), including Plaintiffs' locations, had
22 knowledge of and required Plaintiffs to perform work during rest breaks and off-the-clock. Supervisors
23 throughout California were aware that Plaintiffs and others similarly situated were performing work
24 during these times without proper wages and, where applicable, overtime compensation.

25 31. In light of Defendants' failure to record employees' off-the-clock time that employees
26 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
27 Defendants failed to properly calculate the misclassified hourly, nonexempt CNA employees' hours and
28 therefore, employees' premium pay, minimum wages, and overtime wages due. Accordingly,

Defendants failed to provide accurate wage statements to their misclassified hourly, nonexempt CNA employees identifying all hours worked and all rates in effect during the pay period.

32. At all times herein relevant, the same unlawful practices and procedures described above affect hourly, nonexempt workers of Defendants employed in California.

33. At all times herein relevant, Defendants failed to pay Plaintiffs and Class Members for all hours worked. Thus, Defendants did not pay Plaintiffs and Class Members minimum wages in accordance with law and, because Class Members worked shifts over eight (8) hours in duration, Defendants also did not pay them any overtime wages in accordance with law.

34. Defendants' policy and practice is to require employees to incur necessary, business-related expenses for insufficient funds charged by their bank when Defendants' checks for wages bounced. Defendants' policy is to not reimburse Plaintiffs and Class Members for these insufficient funds charged in violation of Labor Code section 2802.

35. At all times herein relevant, Defendants failed to issue Plaintiffs and Class Members wage statements or anything resembling wage statements.

36. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class Members damages including, but not limited to, loss of wages and compensation and necessary, unreimbursed business expenses. Defendants are liable to Plaintiffs and the Class for failing to pay minimum wages, failing to pay overtime wages, failing to pay all wages owed every pay period, failing to provide timely and accurate wage statements, failing to pay all wages owed upon separation, and unfair competition.

37. Plaintiffs have complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated February 5, 2020, Plaintiffs gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

V. CLASS ACTION AND PAGA REPRESENTATIVE ACTION ALLEGATIONS

38. Plaintiffs are members of and seek to be representatives for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under

Defendants' unlawful employment practices as alleged herein.

39. Plaintiffs bring their first through ninth causes of action on behalf of themselves and on behalf of the following Class¹ of persons as well as all aggrieved persons:

All current and former nonexempt Certified Nursing Assistant employees who have worked as "independent contractors" in California for HELPERPRO SOLUTION GROUP—LAGUNA HILLS DBA HELPERPRO STAFFING SOLUTIONS and/or MSC HEALTHCARE MANAGEMENT INC. and/or YMX ENTERPRISE GROUP LLC at any time during the period beginning four years prior to the filing of this Complaint through the present.

40. This action is appropriately suited for a class action pursuant to Code of Civil Procedure section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives.

41. Numerosity and Ascertainability. The size of the Class makes a class action both necessary and efficient. On information and belief, the proposed Class includes hundreds of current and former employees at Defendants' location(s) in California. Members of the Class are ascertainable through Defendants' records but are so numerous that joinder of all individual Class Members would be impractical.

42. Predominant Common Questions of Law and Fact. Pursuant to section 382, common questions of law and fact exist as to all Class Members. These questions predominate over any individualized issues. These common questions include but are not limited to:

- a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
- b. Whether Defendants willfully misclassified employee CNAs as "independent contractors," in violation of California Labor Code section 226.8(a)(1);
- c. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a pattern or practice of failing to provide timely, off-duty, thirty (30) minute meal periods to

¹ Plaintiffs reserve the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

- 1 Plaintiffs and members of the Class who worked as misclassified hourly, nonexempt CNA
2 employees in California during the Class Period;
- 3 d. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the members
4 of the Class who worked as misclassified hourly, nonexempt CNA employees in California
5 during the Class Period from taking off-duty, thirty (30) minute meal periods on a timely
6 basis;
- 7 e. Whether Defendants engaged in a pattern or practice of failing to properly compensate
8 Plaintiffs and the members of the Class who worked as misclassified hourly, nonexempt CNA
9 employees in California during the Class Period for missed, untimely, or on-duty meal periods
10 as required by California law;
- 11 f. Whether Defendants violated section 11 of the California Industrial Welfare Commission
12 (“IWC”) Wage Order Nos. 4-2001 and 5-2001, by failing to provide Plaintiffs and the
13 members of the Class who worked as misclassified hourly, nonexempt CNA employees in
14 California during the Class Period with timely, off-duty, thirty (30) minute meal periods;
- 15 g. Whether Defendants engaged in an unfair practice and violated California Business and
16 Professions Code, section 17200, *et seq.* by failing to provide Plaintiffs and the members of
17 the Class who worked as misclassified hourly, nonexempt CNA employees in California
18 during the Class Period with their statutory, off-duty, meal periods on a timely basis;
- 19 h. Whether Defendants maintained accurate time records of off-duty, thirty (30) minute meal
20 periods taken by Plaintiffs and members of the Class during the Class Period in accordance
21 with section 7 of IWC Wage Order Nos. 4-2001 and 5-2001;
- 22 i. Whether Defendants failed to compensate, and therefore violated IWC Wage Order Nos. 4-
23 2001 and 5-2001 and Labor Code section 226.7 by failing to provide ten (10) minute,
24 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
25 (4) hours;
- 26 j. Whether Defendants engaged in a pattern or practice of failing to properly compensate
27 Plaintiffs and the members of the Class who worked as misclassified hourly, nonexempt CNA
28 employees in California during the Class Period for failing to provide ten (10) minute,

uninterrupted rest breaks as contemplated by California law for work periods in excess of four (4) hours;

- k. Whether Plaintiffs and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- l. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and the members of the Class who worked as misclassified hourly, nonexempt CNA employees in California for the total hours worked during the Class Period;
- m. Whether Defendants have engaged in a common course of requiring or permitting their misclassified hourly, nonexempt CNA employees to not report all hours worked during the Class Period;
- n. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of overtime pay to Plaintiffs and the Class for hours worked in excess of eight (8) hours in a day;
- o. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of double time for hours worked in excess of twelve (12) hours in a day;
- p. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage Order Nos. 4-2001 and 5-2001 of the IWC by failing to pay overtime pay to Plaintiffs and the Class for hours worked in excess of eight (8) hours in a day;
- q. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage Order Nos. 4-2001 and 5-2001 of the IWC by failing to pay overtime pay to Plaintiffs and the Class for the first eight (8) hours worked in a day on the seventh consecutive day in a workweek and double time for all hours worked in excess of eight (8) hours on such days;
- r. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 by failing to compensate Plaintiffs and the Class for those acts Defendants required Plaintiffs and members of the Class to perform for the benefit of Defendants;
- s. Whether Defendants have engaged in a common course of failing to maintain true and accurate time records for all hours worked by their nonexempt employees;

- 1 t. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
2 statements to Plaintiffs and members of the Class that failed to include payments for missed,
3 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
- 4 u. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
5 to Plaintiffs and members of the Class that failed to accurately state the total hours worked,
6 to the detriment of Plaintiffs and the Class;
- 7 v. Whether Defendants violated California Labor Code section 2802 by failing to reimburse
8 Plaintiffs and Class Members for all necessary business-related expenses they incurred;
- 9 w. Whether Defendants have engaged in a common course of failing to pay nonexempt
10 employees all wages due upon termination;
- 11 x. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
- 12 y. The nature and extent of class-wide injury and the measure of damages for the injury.

13 43. Typicality. Plaintiffs' claims are typical of the members of the Class. Plaintiffs, like other
14 members of the Class working for Defendants in California, were subject to Defendants' policy and
15 practice of refusing to properly and fully pay overtime in violation of California wage and hour laws.
16 Plaintiffs' job duties were and are typical of those of other class members who worked for Defendants in
17 California.

18 44. Adequacy of Representation. Plaintiffs will fairly and adequately represent the interests
19 of the Class because their individual interests are consistent with and not antagonistic to the interests of
20 the Class, and because Plaintiffs have selected counsel who has the requisite resources and ability to
21 prosecute this case as a class action and are experienced labor and employment attorneys who have
22 successfully litigated other cases involving similar issues.

23 45. Superiority of Class Mechanism. The class action mechanism is superior to any
24 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
25 action would permit the large number of injured parties to prosecute their common claims in a single
26 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
27 resources. A class action is the only practical way to avoid the potentially inconsistent results that
28 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means

1 by which Plaintiffs can effectively litigate against a large, well-represented corporate defendant like
2 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
3 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
4 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
5 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
6 over again.

7 8 **VI. FIRST CAUSE OF ACTION**

9 **Failure to Provide Meal Periods**

10 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order Nos. 4-2001 and 5-2001, § 11**
11 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

12 46. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
13 as if fully set forth herein.

14 47. California Labor Code section 226.7(a) provides, "No employer shall require any
15 employee to work during any meal or rest period mandated by an applicable order of the Industrial
16 Welfare Commission."

17 48. Section 11(A) of IWC Wage Order Nos. 4-2001 and 5-2001 provides, in pertinent part:
18 "No employer shall employ any person for a work period of more than five (5) hours without a meal
19 period of not less than 30 minutes, except that when a work period of not more than six (6) hours will
20 complete the day's work the meal period may be waived by mutual consent of the employer and the
21 employee."

22 49. Section 512(k) of the California Labor Code provides, in pertinent part, that: "An
23 employer may not employ an employee for a work period of more than five hours per day without
24 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
25 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
26 both the employer and employee. An employer may not employ an employee for a work period of more
27 than 10 hours per day without providing the employee with a second meal period of not less than 30
28 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be

1 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

2 50. As alleged herein, Defendants failed to authorize and permit timely, uninterrupted meal
3 periods during the Class Period. Plaintiffs and members of the Class were routinely required to work
4 without a timely, uninterrupted meal period at the direction of Defendants and/or with Defendants’
5 knowledge and acquiescence. Defendants’ uniform adoption of chronically understaffed staffing
6 assignments also prevented Plaintiffs and Class Members from being relieved of all duties to take meal
7 periods. The combination of Defendants’ failure to schedule meal periods and their adoption of a
8 chronically understaffed staffing model impeded and prevented Plaintiffs and other Class Members from
9 taking timely, uninterrupted meal periods. As a result, Plaintiffs and Class Members were not relieved
10 of their duties such that they could take duty-free meal periods, and thus had to work through some or all
11 of their meal periods, have their meal periods interrupted to return to work, and/or wait extended periods
12 of time before taking meal periods. For example, Plaintiffs frequently worked a majority of their eight
13 (8)-hour shifts alone with no one to relieve them for a meal period until after having worked over five
14 (5) consecutive hours into their shifts. Because too few employees were staffed to handle the demands
15 of patients requiring immediate attention, Plaintiffs had to perform their duties throughout the majority
16 of their shifts and therefore were not relieved of their duties to take compliant meal periods.

17 51. Defendants also did not schedule second meal periods and had no practice in place for
18 permitting and authorizing Plaintiffs and other employees to take second 30-minute meal periods on days
19 they worked in excess of 10 hours in one day. For example, during their employment, Plaintiffs regularly
20 worked over 10 hours in a day but did not receive a second compliant meal period on those days nor did
21 they consent to waiving them. Because of Defendants’ company-wide chronic understaffed staffing
22 model and time-sensitive nature of certain tasks requiring immediate attention, Plaintiffs and other Class
23 Members were not relieved of all duties such that they could take second 30-minute meal periods and
24 instead had to work through them. Accordingly, Defendants failed to provide all meal periods in violation
25 of California Labor Code sections 226.7 and 512. Defendants knew or should have known that their
26 company-wide adoption of a chronically understaffed staffing model and scheduling policies would
27 result in a failure to provide Plaintiffs and other Class Members with full and timely meal periods as
28 required by the applicable IWC Wage Order and Labor Code sections 226.7 and 512(a). Furthermore,

1 Plaintiffs and other Class Members did not sign valid meal period waivers on days that they were entitled
2 to meal periods but were not relieved of all duties.

3 52. Moreover, Defendants engaged in a systematic, company-wide policy to not pay meal
4 period premiums. Alternatively, to the extent that Defendants did pay Plaintiffs and other Class Members
5 one (1) additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiffs and
6 other Class Members at the correct rate of pay for premium wages because Defendants failed to include
7 all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
8 regular rate of pay. As a result, to the extent Defendants paid Plaintiffs and other Class Members
9 premium pay for missed meal periods, it did so at a lower rate than required by law. As a result,
10 Defendants failed to provide Plaintiffs and other Class Members compliant meal periods and failed to
11 pay the full meal period premiums due, in accordance with California Labor Code sections 204, 210,
12 226.7, and 512.

13 53. By their actions in requiring their employees to work through meal periods and/or their
14 failure to relieve nonexempt, misclassified hourly, nonexempt CNA employees of their duties for their
15 off-duty meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of
16 IWC Wage Order Nos. 4-2001 and 5-2001 and is liable to Plaintiffs and the Class.

17 54. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived
18 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
19 section 11 of IWC Wage Order Nos. 4-2001 and 5-2001, in the amount of one additional hour of pay at
20 the employee's regular rate of pay for each work period during each day in which Defendants failed to
21 provide their misclassified hourly, nonexempt CNA employees with timely, statutory, off-duty meal
22 periods.

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1 **VII. SECOND CAUSE OF ACTION**

2 **Failure to Provide Rest Breaks**

3 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

4 **IWC Wage Order Nos. 4-2001 and 5-2001, § 12**

5 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

6 55. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
7 as if fully set forth herein.

8 56. California Labor Code section 226.7(a) provides, “No employer shall require any
9 employee to work during any meal or rest period mandated by an applicable order of the Industrial
10 Welfare Commission.”

11 57. Section (12)(A) of IWC Wage Order Nos. 4-2001 and 5-2001 provides, in pertinent part:
12 “Every employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period. The authorized rest period time shall be based on
14 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
15 fraction thereof. However, a rest period need not be authorized for employees whose total daily work
16 times is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
17 worked for which there shall be no deduction from wages.”

18 58. Section (12)(B) of IWC Wage Order Nos. 4-2001 and 5-2001, “If an employer fails to
19 provide an employee with a rest period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
21 each workday that the rest period is not provided.”

22 59. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class
23 Period. Plaintiffs and members of the Class were routinely required to work through rest breaks at the
24 direction of Defendants and/or with Defendants’ knowledge and acquiescence.

25 60. Furthermore, as with meal periods, Defendants’ scheduling policies, chronically
26 understaffed staffing model, resultant lack of break coverage, and frequent interruptions by urgent
27 requests from doctors, nurses, and patients, at which time Plaintiffs and Class Members must be or else
28 make themselves available during their rest breaks, Plaintiffs and other Class Members were and are

1 prevented from being relieved of all duty in order to take compliant rest breaks, thereby forcing Plaintiffs
2 and other Class Members to forgo rest breaks and/or remain on duty during them. As a result, Plaintiffs
3 and Class Members would work shifts in excess of 3.5 hours without 10-minute rest breaks to which they
4 were entitled. For example, throughout their employment, during 8-hour or longer shifts, Plaintiffs and
5 Class Members regularly worked without receiving at least one of their 10-minute rest breaks, continuing
6 to perform their duties or being interrupted while on a rest break, such as assisting patients with all daily
7 activities, such as eating, bathing, shaving, washing, dressing and changing, mobility and transfers in/out
8 of wheelchairs, all without taking 10-minute rest breaks because there were too few employees staffed
9 to cover Plaintiffs' responsibilities that required attention at all times.

10 61. At the same time, Defendants implemented a company-wide policy to not pay rest break
11 premiums. Alternatively, to the extent that Defendants did pay Plaintiffs and other Class Members one
12 (1) additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiffs and other
13 Class Members at the correct rate of pay for premium wages because Defendants failed to include all
14 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
15 regular rate of pay. As a result, to the extent Defendants paid Plaintiffs and other Class Members
16 premium pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiffs
17 and other Class Members were denied rest breaks and Defendants failed to pay the full rest break
18 premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

19 62. Defendants' unlawful conduct alleged herein occurred in the course of employment of
20 Plaintiffs and all others similarly situated and such conduct has continued through the filing of the initial
21 Complaint.

22 63. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the Class
23 have been deprived of timely rest breaks and/or were not paid for rest breaks taken during the Class
24 Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one (1) additional
25 hour of pay at the employee's regular rate of compensation for each work period during each day in
26 which Defendants failed to provide employees with timely and/or paid rest breaks.

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1 **VIII. THIRD CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

4 **and 1197; IWC Wage Order Nos. 4-2001 and 5-2001, § 4**

5 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

6 64. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
7 as if fully set forth herein.

8 65. Labor Code section 510 provides in relevant part: “[e]ight hours of labor constitutes a
9 day’s work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
10 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
11 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
12 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
13 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
14 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
15 of an employee.”

16 66. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
18 minimum so fixed is unlawful.”

19 67. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
20 for all hours worked in amounts set by state law.

21 68. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to
22 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
24 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
25 attorney’s fees, and costs of suit.”

26 69. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6
27 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
28 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount

1 equal to the wages unlawfully unpaid and interest thereon.”

2 70. Pursuant to section (2)(K) of IWC Wage Order Nos. 4-2001 and 5-2001, at all times
3 material hereto, “hours worked” includes “the time during which an employee is subject to the control of
4 an employer, and includes all the time the employee is suffered or permitted to work, whether or not
5 required to do so.”

6 71. At all times relevant during the liability period, under the provisions of IWC Wage Order
7 Nos. 4-2001 and 5-2001, Plaintiffs and each Class Member should have received not less than the
8 minimum wage in a sum according to proof for the time worked, but not compensated.

9 72. For all hours that Plaintiffs and Class Members worked, they are entitled to not less than
10 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
11 amount equal to the unpaid minimum wages and interest thereon.

12 73. Pursuant to Labor Code section 1194, Plaintiffs and Class Members are also entitled to
13 their attorneys’ fees, costs, and interest according to proof.

14 74. At all times relevant during the liability period, Defendants willfully failed and refused,
15 and continue to willfully fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

16 75. As described above, Defendants required Plaintiffs and other Class Members to work,
17 such as assisting patients with all daily activities, such as eating, bathing, shaving, washing, dressing and
18 changing, mobility and transfers in/out of wheelchairs, during their meal periods due to Defendants’ lack
19 of coverage for their employees and decision to staff too few employees at a given time to handle the
20 demands of a hospital or care facility. Defendants did not pay at least minimum wages for off-the-clock
21 hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did
22 not qualify for overtime premium pay, Defendants did not pay at least minimum wages for those hours
23 worked off-the-clock.

24 76. Defendants’ unlawful conduct alleged herein occurred in the course of employment of
25 Plaintiffs and all other similarly situated nonexempt, misclassified hourly, nonexempt CNA employees,
26 and Defendants have done so continuously throughout the filing of this complaint.

27 77. As a direct and proximate result of Defendants’ violation of Labor Code sections 510 and
28 1197, Plaintiffs and other Class Members have suffered irreparable harm and money damages entitling

1 them to damages, injunctive relief or restitution. Plaintiffs, on behalf of themselves and on behalf of the
2 Class, seeks damages and all other relief allowable including all wages due while working as Defendants'
3 misclassified hourly, nonexempt CNA employees, attorneys' fees, liquidated damages, prejudgment
4 interest, and as to those employees no longer employed by Defendants, waiting time penalties pursuant
5 to Labor Code sections 200, *et seq.*

6 78. Plaintiffs and Class Members are entitled to the unpaid amount of minimum wages, pre-
7 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor
8 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

9 10 **IX. FOURTH CAUSE OF ACTION**

11 **Failure to Pay Overtime Wages**

12 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order Nos. 4-2001 and 5-2001, § 3**
13 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

14 79. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
15 as if fully set forth herein.

16 80. Pursuant to section 3 of IWC Wage Order Nos. 4-2001 and 5-2001; California Code of
17 Regulations, Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500,
18 510, 512, 1194, and 1198, Defendants were required to compensate Plaintiffs and members of the Class
19 for all overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay
20 for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
21 eight (8) hours on the seventh consecutive work day, with double time after eight (8) hours on the seventh
22 day of any work week, or after twelve (12) hours in any work day.

23 81. Plaintiffs and members of the Class were and are nonexempt employees entitled to the
24 protections of IWC Wage Order Nos. 4-2001 and 5-2001; California Code of Regulations, Title 8, section
25 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during
26 the Class Period, Plaintiffs and other members of the Class consistently worked five (5) days per week
27 for shifts of approximately eight (8) hours or more. During the course of Plaintiffs' respective terms of
28 employment, and during the course of the employment of the members of the Class, Defendants failed

1 to compensate Plaintiffs and the Class for overtime hours worked as required under the aforementioned
2 Labor Codes and Regulations.

3 82. At all times relevant herein, Defendants failed to pay Plaintiffs and Class Members any
4 overtime wages.

5 83. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiffs and members
6 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
7 work performed during the four (4) years preceding the filing of this Complaint, based on appropriate
8 calculations of the “total remuneration” for each workweek.

9 84. In violation of state law, Defendants have knowingly and willfully refused to perform
10 their obligations to compensate Plaintiffs and the Class for all wages earned and all hours worked. As a
11 direct result, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to
12 the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys’ fees in
13 seeking to compel Defendants to fully perform their obligations under state law, all to their respective
14 damage in amounts according to proof at time of trial, but in amounts in excess of the minimum
15 jurisdiction of this Court.

16 85. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
17 and deliberate intention of injuring Plaintiffs and the Class, from improper motives amounting to malice,
18 and in conscious disregard of Plaintiffs’ rights and the rights of the Class. Plaintiffs and the Class are
19 thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts
20 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

21 86. Defendants’ conduct described herein violates IWC Wage Order Nos. 4-2001 and 5-2001;
22 California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226,
23 500, 510, 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512,
24 558, and 1194, Plaintiffs and the Class are entitled to recover the unpaid balance of overtime
25 compensation Defendants owes Plaintiffs and the Class, plus interest, penalties, attorneys’ fees, expenses,
26 and costs of suit.

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Failure to Reimburse All Necessary, Business-Related Expenses

in Violation of Cal. Labor Code § 2802

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

87. Plaintiffs re-allege and incorporate all preceding paragraphs as if set forth fully herein.

88. California Labor Code section 2802 provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful.”

89. During the applicable statutory period, Plaintiffs and Class Members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Defendants, Defendants did not reimburse Plaintiffs and Class Members for these expenditures or losses. The primary expenses at issue here are, but are not limited to, expenses for insufficient funds fees assessed by banks for bounced checks Defendants issued for payment of wages to Plaintiffs and Class Members.

90. Defendants have failed to fully reimburse Plaintiffs and Class Members for these necessary business-related expenses and losses.

91. Plaintiffs and Class Members are entitled to recover their necessary unreimbursed business-related expenses and losses incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California, per California Labor Code section 2802.

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Failure to Furnish Timely and Accurate Wage Statements

Upon Payment of Wages in Violation of Cal. Labor Code § 227.3

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

92. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

1 93. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
2 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or her
3 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
4 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis” Section (e) provides: “An employee suffering injury as a
6 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled
7 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
8 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
9 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
10 award of costs and reasonable attorney’s fees.”

11 94. Defendants entirely failed to issue Plaintiffs and Class Members any wage statements at
12 all, let alone noncompliant ones.

13 95. Defendants failed to accurately record the overtime hours worked by Plaintiffs and Class
14 Members.

15 96. Additionally, Defendants failed to accurately record all rates of pay in effect during the
16 pay period.

17 97. Plaintiffs and Class Members were damaged by these failures because, among other
18 things, the failures hindered Plaintiffs and the Class from determining the amounts of wages actually
19 owed to them.

20 98. Plaintiffs and Class Members request recovery of Labor Code section 226(e) penalties
21 according to proof, as well as interest, attorneys’ fees and costs pursuant to Labor Code section 226(e),
22 in a sum as provided by the Labor Code and/or other statutes.

23
24 **XII. SEVENTH CAUSE OF ACTION**

25 **Failure to Pay All Wages Owed Upon Separation**

26 **in Violation of Cal. Labor Code §§ 201–203**

27 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

28 99. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint

1 as if fully set forth herein.

2 100. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an
3 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

4 101. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written
5 contract for a definite period quits his or her employment, his or her wages shall become due and payable
6 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

8 102. Section 203 of the California Labor Code provides that if an employer willfully fails to
9 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
10 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

11 103. At all times relevant during the liability period, Plaintiffs and the other members of the
12 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
13 section 201, upon Plaintiffs’ and Class Members’ separation dates, Defendants were required to pay
14 Plaintiffs and the Class members all wages earned.

15 104. At the time of Plaintiffs’ and Class Members’ respective separation dates, Plaintiffs and
16 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiffs and other members of
17 the Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
18 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
19 separation from employment with Defendants as required by California Labor Code sections 201 and
20 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiffs and the Class
21 members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but
22 in excess of the jurisdictional minimum of this Court.

23 105. Defendants’ failure to pay Plaintiffs and the Class respective wages due and owed to them
24 was willful, and done with the wrongful and deliberate intention of injuring Plaintiffs and the Class
25 Members and in conscious disregard of their rights.

26 106. Defendants’ willful failure to pay former employee Plaintiffs and the Class all of the
27 wages due and owing them constitutes violations of Labor Code sections 201 and 203, which provide
28 that an employee’s wages will continue as a penalty up to thirty (30) days from the time the wages were

1 due. Therefore, former employee Plaintiffs and the Class members are each entitled to penalties pursuant
2 to Labor Code section 203.

3
4 **XIII. EIGHTH CAUSE OF ACTION**

5 **Violations of California's Unfair Competition Law ("UCL"),**

6 **California Business and Professions Code §§ 17200, *et seq.***

7 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

8 107. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 108. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any
11 unlawful, unfair, or fraudulent business practices.

12 109. Through their actions alleged herein, Defendants have engaged in unfair competition
13 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,
14 and/or fraudulent business practices under the UCL.

15 110. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
16 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
17 to pay Class Members wages and compensation they earned through labor provided, and failing to
18 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but
19 is not limited to, failing to issue wage statements and/or issuing wage statements containing false and/or
20 misleading information about the time the Class Members worked and the amount of wages or
21 compensation due.

22 111. Defendants' violations of California wage and hour laws and illegal payroll practices or
23 payment policies constitute a business practice because they were done repeatedly over a significant
24 period of time, and in a systematic manner to the detriment of Plaintiffs and Class Members.

25 112. Plaintiffs have standing to assert this claim because he has suffered injury in fact and has
26 lost money as a result of Defendants' conduct.

27 113. For the four (4) years preceding the filing of this action, Plaintiffs and Class Members
28 have suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged

1 from Defendants in an amount according to proof at the time of trial and an injunction prohibiting them
2 from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

3
4 **XIV. NINTH CAUSE OF ACTION**

5 **For Civil Penalties Pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”),**
6 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**
7 **(Brought by Plaintiffs on Behalf of Themselves and the General Public Against All Defendants)**

8 114. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 115. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
11 Order that provides for a civil penalty to be assessed and collected by California’s Labor and Workforce
12 Development Agency (“LWDA”) for violations of the California Labor Code and applicable IWC Wage
13 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
14 themselves and other current or former employees pursuant to procedures outlined in California Labor
15 Code section 2699.3.

16 116. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
17 who was employed by the alleged violator and against whom one or more of the alleged violations was
18 committed.”

19 117. Plaintiffs and other current and former employees of Defendants are “aggrieved
20 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former
21 employees and one or more of the alleged violations were committed against them.

22 118. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
23 Plaintiffs, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
24 section 2699.5, after the following requirements have been met:

- 25 a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing
26 to the LWDA and by certified mail to the employer of the specific provisions of the
27 California Labor Code alleged to have been violated, including the facts and theories to
28 support the alleged violations;

- 1 b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar
2 (\$75) filing fee; and
- 3 c. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved
4 employee by certified mail that it does not intend to investigate the alleged violation within
5 sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of
6 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar
7 days of the postmark date of the Employee's Notice, the aggrieved employee may
8 commence a civil action pursuant to California Labor Code section 2699 to recover civil
9 penalties in addition to any other penalties to which the employee may be entitled.

10 119. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
11 Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those
12 listed in section 2699.5 after the following requirements have been met:

- 13 a. The aggrieved employee shall give written notice by online filing ("Employee's Notice")
14 to the LWDA and by certified mail to the employer of the specific provisions of the
15 California Labor Code alleged to have been violated, including the facts and theories to
16 support the alleged violations;
- 17 b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar
18 (\$75) filing fee; and
- 19 c. The employer may cure the alleged violation within thirty-three (33) calendar days of the
20 postmark date of the Employee's Notice. The employer shall give written notice by
21 certified mail within that period of time to the aggrieved employee or representative and
22 the agency if the alleged violation is cured, including a description of actions taken, and
23 no civil action pursuant to Section 2699 may commence. If the alleged violation is not
24 cured within the 33-day period, the employee may commence a civil action pursuant to
25 Section 2699.

26 120. On February 5, 2020, Plaintiffs provided written notice by online filing to the LWDA and
27 by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
28 been violated, including facts and theories to support the alleged violations, in accordance with California

1 Labor Code section 2699.3. Plaintiffs' notice to the LWDA was accompanied by the \$75 filing fee. A
2 true and correct copy of Plaintiffs' written notice to the LWDA and Defendants dated February 5, 2020
3 is attached hereto as "**Exhibit 1.**"

4 121. As of the filing date of the initial complaint, over sixty-five (65) days have passed since
5 Plaintiffs sent the LWDA Notice described above, and the LWDA has not responded that it intends to
6 investigate Plaintiffs' claims. Defendants have not given notice that it has cured the alleged violations
7 set forth in this Complaint. Thus, Plaintiffs have satisfied the administrative prerequisites under
8 California Labor Code section 2699.3(a) and (c) to recover civil penalties against Defendants, in addition
9 to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
10 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

11 122. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf
12 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
13 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
14 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
15 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
16 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this
19 section are in addition to any other civil or criminal penalty provided by law."

20 123. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
21 employer(s) who violated Plaintiffs' and other non-party aggrieved employees' rights by violating
22 various sections of the California Labor Code as set forth above.

23 124. As set forth below, Defendants have violated numerous provisions of both the Labor Code
24 sections regulating hours and days of work as well as the applicable IWC Wage Order, including:

- 25 a. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order for
26 Defendants' failure to compensate Plaintiffs and other Class Members with overtime
27 wages for all hours worked in excess of eight (8) in one day or forty (40) in one week and
28 double time for all hours worked in excess of twelve (12) hours, as set forth above;

- 1 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
2 IWC Wage Order for Defendants' failure to compensate Plaintiffs and other Class
3 Members with at least minimum wages for all hours worked as set forth above;
- 4 c. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
5 Order for Defendants' failure to provide Plaintiffs and other Class Members with meal
6 periods and/or rest breaks, as set forth above;
- 7 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for
8 failure to provide accurate and complete wage statements to Plaintiffs and other Class
9 Members as set forth above;
- 10 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order
11 for failure to maintain payroll records. California Labor Code section 1198 provides that
12 the maximum hours of work and the standard conditions of labor shall be those fixed by
13 the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
14 1198 further provides that "[t]he employment of any employees for longer hours than
15 those fixed by the order or under conditions of labor prohibited by the order is unlawful."
16 Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
17 records showing when the employee begins and ends each work period and meal period.
18 During the relevant time period, Defendants failed, on a company-wide basis, to keep
19 records of meal period start and stop times for Plaintiffs and other non-party aggrieved
20 employees in violation of section 1198. California Labor Code section 1174(d) provides
21 that "[e]very person employing labor in this state shall . . . [k]eep a record showing the
22 names and addresses of all employees employed and the ages of all minors" and "[k]eep,
23 at a central location in the state or at the plants or establishments at which employees are
24 employed, payroll records showing the hours worked daily by and the wages paid to, and
25 the number of piece-rate units earned by and any applicable piece rate paid to, employees
26 employed at the respective plants or establishments" During the relevant time period,
27 and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
28 accurate payroll records for Plaintiffs and other non-party aggrieved employees showing

the daily hours they actually worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked;

- f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;
- g. Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;
- h. Violations of Labor Code section 2802 for failure to reimburse all necessary, business-related losses and expenses;
- i. Plaintiffs and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and
- j. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

125. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiffs, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other non-party aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

126. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and twenty-five percent (25%) to all aggrieved employees.

127. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and also on behalf of the general public, respectfully requests that this Court find against Defendants as follows:

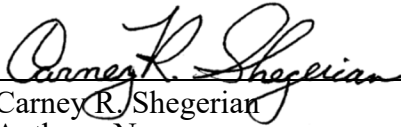
1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiffs and each Class Member;
4. One hour of wages due to Plaintiffs and each Class Member for each work period of more than four (4) hours when they did not receive an uninterrupted ten (10) minute rest break;
5. One hour of wages due to Plaintiffs and each Class Member for each work period of more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
6. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claim;
7. For restitution of all monies due to Plaintiffs and members of the Class and disgorged profits from the unlawful business practices of Defendants;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For reimbursement of business expenses under California Labor Code section 2802;
11. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;
12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;
13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;
14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure 1021.5;
17. Accounting of Defendants' records for the liability period;
18. General, special, and consequential damages, to the extent allowed by law; and

1 19. All such other and further relief that the Court may deem just and proper.
2

3 Dated: April 14, 2020

SHEGERIAN & ASSOCIATES, INC.

4
5 By:

_____

6 Carney R. Shegerian
7 Anthony Nguyen
8 Cheryl A. Kenner

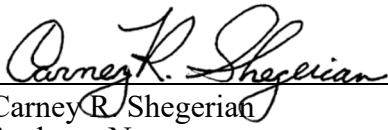
9 Attorneys for Plaintiffs AMY SHIELL and
10 CECILIA MENDOZA and all others similarly
11 situated and aggrieved
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs AMY SHIELL, on behalf of themselves and all others similarly situated, hereby demands
3 a jury trial with respect to all issues triable of right by jury.
4

5 Dated: April 14, 2020

SHEGERIAN & ASSOCIATES, INC.

6
7 By: 
8 Carney R. Shegerian
9 Anthony Nguyen
Cheryl A. Kenner

10 Attorneys for Plaintiffs AMY SHIELL and
11 CECILIA MENDOZA and all others similarly
12 situated and aggrieved
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EXHIBIT 1

SHEGERIAN & ASSOCIATES, INC.

February 5, 2020

VIA ONLINE SUBMISSION

David M. Lanier, Secretary
California Labor & Workforce Development
Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

HelperPro Solution Group - Laguna Hills
211 E. Imperial Hwy., Ste. 105
Fullerton, CA 92835

YMX Enterprise Group, LLC
211 E. Imperial Hwy., Ste. 105
Fullerton, CA 92835

MSC Healthcare Management Group Inc.
9329 Klingerman St
South El Monte, CA 91733

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.

To: The California Labor and Workforce Development Agency; HelperPro Solution Group - Laguna Hills dba HelperPro Staffing Solutions; Hope Staffing; YMX Enterprise Group, LLC; MSC Healthcare Management Group Inc.

From: Amy Shiell and Cecilia Mendoza, on behalf of themselves and all other current and former Certified Nursing Assistants for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by employees Amy Shiell ("Ms. Shiell") and Cecilia Mendoza ("Ms. Mendoza") to seek compensation and all other available relief, including civil penalties on their behalves and on the behalf of all those similarly aggrieved (collectively, with Ms. Shiell and Ms. Mendoza, "Claimants") who have been injured by violations of the California Labor Code. Ms. Shiell, on behalf of themselves and all other similarly aggrieved current and former hourly nonexempt employees misclassified as independent contractors of HelperPro Solution Group - Laguna Hills dba HelperPro Staffing Solutions ("HelperPro"); YMX

Enterprise Group, LLC (“YMX”); MSC Healthcare Management Group Inc. (“MSC”), intend to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Claimants Ms. Amy Shiell (“Ms. Shiell”) and Ms. Cecilia Mendoza (“Ms. Mendoza”), on behalf of themselves and all other similarly situated current and former Certified Nursing Assistants of HelperPro, YMX, and MSC (“Employers”) are or were Certified Nursing Assistants who are or were engaged in providing health-related/medical-related services to Employers’ clients. Employers operate a staffing agency of sorts that supply Certified Nursing Assistants to multiple facilities such as nursing and rehabilitation facilities, assisted living facilities, and convalescent hospitals that all provide healthcare services to residents and/or patients in California. As part of their employment with Employers, Claimants Ms. Shiell and Ms. Mendoza were assigned to and required to suffer and permitted to work without pay, while performing tasks including, but not limited to: assisting patients with all daily activities, such as eating, bathing, shaving, washing, dressing and changing, mobility and transfers in/out of wheelchairs.

During the entire course of their employment, Employers intentionally misclassified employees as independent contractors, including Ms. Shiell and Ms. Mendoza, in violation of Labor Code section 226.8(a)(1). Employers failed to provide Ms. Shiell and Ms. Mendoza and those similarly situated with overtime pay, meal periods, and rest breaks. As a consequence, Employers have failed to comply with Labor Code sections 226.7, 510, and 512, and section 11 of Industrial Welfare Commission (“IWC”) Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders. In addition, Employers failed to pay minimum wages to Ms. Shiell and Ms. Mendoza for all hours worked and other Certified Nursing Assistants in violation of Labor Code sections 510, 1194, and 1197, and section 4 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders, and also failed to provide accurate, timely itemized pay statement accounting records Ms. Shiell and Ms. Mendoza and other Certified Nursing Assistants in violation of Labor Code section 226(a). With regard to those no longer employed by Employers, including Ms. Shiell and Ms. Mendoza, Employers violated Labor Code sections 201–203 by failing to pay all wages due upon separation. Ms. Shiell and Ms. Mendoza are informed and believe that such violations are ongoing, systematic, and continuous. They intend to bring an action against Employers under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

¹ Without limitation, Ms. Shiell and Ms. Mendoza, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of

Theories of Labor Code Violations and Remedies:

Although Employers misclassified Claimants Ms. Shiell and Ms. Mendoza as independent contractors, they are/were employed as Certified Nursing Assistants by Employers. Ms. Shiell worked for Employers from approximately October 18, 2018 through January 31, 2020. At the time of her separation, Ms. Shiell was earning \$19.00 per hour on weekend shifts and \$18.00 per hour on all other shifts. Ms. Mendoza worked for Employers from approximately January 29, 2019 through January 31, 2020. At the time of her separation, Ms. Mendoza was earning \$19.00 per hour on weekend shifts and \$18.00 per hour on all other shifts.

Here, the position of Certified Nursing Assistant essentially requires Certified Nursing Assistants to assisting patients and/or residents with healthcare-related services at various facilities throughout California that have contracted with Employers. For a period of at least four (4) years prior to February 2020, but for our purposes here, one (1) year, Employers have misclassified all of its Certified Nursing Assistants and violated a multitude of Labor Codes as a result.

It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (Cal. Lab. Code § 226.8(a)(1).) . . . “‘Willful misclassification’ means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (Cal. Lab. Code § 226.8(i)(4).) Accordingly, by willfully misclassifying its Certified Nursing Assistants as independent contractors, past and present, including Ms. Shiell and Ms. Mendoza, Employers have violated Labor Code section 226.8.

If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law. (Cal. Lab. Code section 226.8(b).)

Claimants, which includes Ms. Shiell and Ms. Mendoza and the class and group of aggrieved persons they seek to represent, were at all times entitled to uninterrupted, off-duty, unpaid meal periods or premium pay in lieu thereof. Employers treated its Certified Nursing Assistants as independent contractors, so it did not have a meal period policy, written or verbal, that authorized and permitted Claimants to take rest breaks. Employers failed to authorize and permit any meal

Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

periods at all for Ms. Shiell and Ms. Mendoza and all others similarly situated as required by Labor Code sections 512 and 226.7 and section 11 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders. Claimants did not clock out to take a meal period, but rather Employers used an auto-deduct practice that records meal periods automatically regardless of whether or when Claimants took any meal periods or for how long. Employers failed to compensate their Certified Nursing Assistants with premium pay for these noncompliant meal periods as required by Labor Code section 226.7. Furthermore, since Employers required Ms. Shiell and Ms. Mendoza and others similarly situated to work during their meal periods in violation of Labor Code section 512, Claimants seek wages of one additional hour of pay as required by Labor Code section 226.7(b) as well as all available penalties as set forth in section 20 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders, and Labor Code sections 558 and 2699(a) or (f).

Claimants were at all times entitled to take rest breaks. Employers misclassified its Certified Nursing Assistants as independent contractors, so it did not have a rest break policy, written or verbal, that authorized and permitted Claimants to take rest breaks. Thus, Employers failed to authorize and permit Claimants to take rest breaks as required by Labor Code section 226.7 and section 12 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders. Further, Employers failed to compensate its Certified Nursing Assistants with premium pay for these noncompliant rest breaks as required by Labor Code section 226.7. As a result, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 226.7, 558, and section 20 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders. Furthermore, since Employers required its employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek as all available penalties as set forth in Labor Code section 2699(a) or (f).

Also, Claimants were at all times entitled to payment of minimum wages. Employers have failed to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders. For instance, due to understaffing, Claimants were not permitted to take off-duty meal periods and rest breaks. Claimants did not clock out to take a meal period, but rather Employers use an auto-deduct practice that records meal periods automatically regardless of whether or when Claimants took any meal periods nor for how long. Claimants were too busy and not authorized to take rest periods. These policies and practices caused Claimants to remain on duty during meal periods and rest breaks, and therefore, constitute a failure on Employers' part to provide compliant meal periods and rest breaks. With that, Employers' corresponding failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes Employers' failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Similarly, in other instances, Claimants were and are unable to take compliant meal periods and rest breaks as a result of patients with urgent needs or care facilities' duties that necessitated the Claimants' immediate attention. Employers' failure to pay Claimants' meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail above, also constitutes a failure to pay minimum wages to Claimants. Next,

Claimants worked a substantial amount of time while off-the-clock, meaning they were not punched in for work, and therefore, those working hours were not recorded and then compensated. Ms. Shiell and Ms. Mendoza and other Claimants spent a substantial amount of time working off-the-clock each shift, during which time they spent working while the system automatically recorded them taking meal periods. Claimants' off-the-clock time was never subsequently added and compensated. Accordingly, Claimants were not paid for that time spent working off the clock. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders.

At all times relevant herein, Claimants were entitled to the payment of overtime wages. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Employers were required to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Employers have failed to and continue to fail to pay its Certified Nursing Assistants overtime wages, yet regularly required them to work in excess of eight hours per day and/or forty hours per week without premium pay under Labor Code section 1194. Claimant Ms. Shiell and Ms. Mendoza regularly worked five (5) days per week for ten (10) to twelve (12) hours or more per shift and did not receive any overtime wages. So, as a result of misclassifying its Certified Nursing Assistants as independent contractors, Employers intentionally failed to pay Claimants overtime. In fact, during the entire course of their employment, Employers failed to provide Ms. Shiell and Ms. Mendoza and continue to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512, and section 3 of IWC Wage Order Nos. 4-2001, 5-2001, and any other applicable IWC Wage Orders.

By failing to pay all minimum wages, overtime wages, and premium pay for noncompliant meal periods and rest breaks, Employers have correspondingly failed and continue to fail to pay all wages owed every pay period in violation of Labor Code section 204 and upon separation in violation of Labor Code sections 201–203. Employers didn't rectify each of its failings every pay period when Ms. Shiell and Ms. Mendoza separated from Employers by paying them all of their unpaid wages. In short, Employers' uniform failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes Employers' failure to pay Claimants minimum wages, all overtime wages, and all wages owed every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197.

Employers' uniform failure to pay Ms. Shiell and Ms. Mendoza and other Certified Nursing Assistants overtime and minimum wages and uniform failure to authorize and permit them to take meal periods and rest breaks was not rectified by paying them an additional one-hour's wage per day at their regular rate of pay, or alternatively, premium compensation, if applicable, pursuant to Labor Code section 1194. Employers' failure to provide such compensation in lieu of compliant meal periods and rest breaks constitutes two ways, among others, in which Employers failed to pay Claimants minimum wages, all wages owed every pay period, all wages owed upon separation,

which violates Labor Code sections 201–203, 204, and 204(b), and as such, entitles Claimants to recover penalties as set forth in Labor Code section 210 and/or section 1194, *et seq.*

Claimants were at all times entitled to receive timely and accurate wage statements from Employers pursuant to Labor Code section 226. Employers never issued Claimants any wage statements or even earnings statements. The only record Claimants have for their wages are the direct deposit entries on their personal bank statements. However, to the extent they did, the wage statements Employers issued were inaccurate and noncompliant for multiple reasons including, but not limited to: (1) failing to pay Claimants their meal period and rest break premiums for all noncompliant meal periods and rest breaks; (2) failing to pay Claimants all minimum wages owed; (3) failing to pay Claimants all overtime wages owed both by failing to capture all overtime hours and by implementing a policy that did not pay Claimants 1.5 times their regular rate but rather paid them a flat rate for all hours; (4) failing to reflect the correct number of total hours worked every pay period, which, as a consequence, resulted in (5) failing to reflect the accurate amount of gross wages owed. Since these wage statements were inaccurate and remain as such, they are untimely. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Employers for all necessary, business-related expenses they incurred in executing their duties for Employers. California Labor Code section 2802 provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Employers have failed to fully reimburse all necessary business-related expenses and losses Ms. Shiell and Ms. Mendoza and other Certified Nursing Assistants incurred, including but not limited to all losses Claimants incurred as a result of Claimants’ banks assessing fees for insufficient funds from bounced checks for/direct deposits of payments of earnings by Employers. Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802 for these and any other losses or unreimbursed necessary, business-related expenses.

Accordingly, Ms. Shiell and Ms. Mendoza seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Ms. Shiell and Ms. Mendoza, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Employers for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

LABOR AND WORKFORCE DEVELOPMENT AGENCY
HELPERPRO/YMX/MSC
February 5, 2020
Page 7

Very truly yours,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in blue ink that reads "Carney R. Shegerian". The signature is written in a cursive, flowing style with a large initial 'C'.

Carney R. Shegerian

CRS/ck