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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAYMOND ESPINOSA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

ALLIANCE HEALTHCARE SERVICES,
INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE
HEALTHCARE RADIOLOGY, a Delaware
corporation; ALLIANCE ONCOLOGY, LLC, a
Delaware limited liability company; and DOES
1 through 10, inclusive,

Defendants.

ANTHONY RICE on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

ALLIANCE HEALTHCARE SERVICES,
INC., a Delaware Company d/b/a ALLIANCE
HEALTHCARE RADIOLOGY, and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2020-00011228-CU-OE-CTL

[Espinosa]

Case No.: 34-2020-00291025 [Rice]

**SECOND AMENDED COMPLAINT FOR
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

(1) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698, *et
seq.*;

Jury Trial Demanded

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Plaintiffs Raymond Espinosa and Anthony Rice, individually and as aggrieved employees and on behalf of all other aggrieved employees, allege as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, codified at California Labor Code sections 2698, *et seq.* (“PAGA”), to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as non-exempt, hourly paid employees and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

2. This Court has jurisdiction over Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

3. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiffs this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Raymond Espinosa (“Plaintiff Espinosa”) is a resident of San Diego, in San Diego County, California. Defendants employed Plaintiff Espinosa as an hourly paid, non-exempt MRI Technician from approximately 2006 to September 2019. Plaintiff Espinosa worked for Defendants at various Kaiser Permanente locations, such as San Gabriel, Los Alamitos, and San Diego, California. During his employment, Plaintiff Espinosa typically worked nine (9) hours or more per day, five (5) to

1 six (6) days per week, from 8:00 a.m. to 5:00 p.m. Plaintiff Espinosa's primary job duties included,
2 without limitation, coordinating MRI patient arrivals and departures, evaluating MRI images and
3 ensuring images were of diagnostic quality for interpretation, cleaning the MRI unit in between each
4 patient and at the end of every shift, and coordinating the cleaning and removal of medical waste.

5 5. Plaintiff Anthony Rice ("Plaintiff Rice") was employed as an MRI Technologist by
6 Defendants on or about February 26, 2018, until about August 6, 2020. Plaintiff Rice typically worked
7 40 hours a week at Defendant's Modesto, Roseville, or Elk Grove, CA locations. During his
8 employment, Plaintiff Rice typically worked from 6:30 a.m. to 7:00 p.m. and typically worked between
9 three to four days per week. His primary job duties were similar to those of Plaintiff Espinosa but also
10 included performing quality control of the MRI unit before the start and after the end of his shifts.

11 6. ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN
12 CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY was and is, upon information and
13 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are
14 engaged throughout this county, the State of California, or the various states of the United States of
15 America.

16 7. ALLIANCE ONCOLOGY, LLC was and is, upon information and belief, a Delaware
17 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
18 throughout this county, the State of California, or the various states of the United States of America.

19 8. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
20 under the fictitious names DOES 1 through 10, and will seek leave of this Court to amend the complaint
21 and serve such fictitiously named Defendants once their names and capacities become known.

22 9. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the
23 partners, agents, owners, or managers of ALLIANCE HEALTHCARE SERVICES, INC. WHICH
24 WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY,
25 ALLIANCE ONCOLOGY, LLC, at all relevant times.

26 10. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
27 omissions alleged herein was performed by, or is attributable to, ALLIANCE HEALTHCARE
28 SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE

1 HEALTHCARE RADIOLOGY; ALLIANCE ONCOLOGY, LLC; and/or DOES 1 through 10
2 (collectively, “Defendants” or “ALLIANCE HEALTHCARE”), each acting as the agent, employee,
3 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
4 acting within the course and scope of such agency, employment, joint venture, or concerted activity with
5 legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with,
6 and represent, the official policy of Defendants.

7 11. At all relevant times, Defendants, and each of them, ratified each and every act or
8 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
9 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
10 alleged.

11 12. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in
12 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
13 and transactions alleged herein.

14 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
15 omissions alleged herein was performed by, or is attributable to, ALLIANCE HEALTHCARE
16 SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE
17 HEALTHCARE RADIOLOGY; ALLIANCE ONCOLOGY, LLC; and/or DOES 1 through 10
18 (collectively, “Defendants” or “ALLIANCE HEALTHCARE”), each acting as the agent, employee,
19 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
20 acting within the course and scope of such agency, employment, joint venture, or concerted activity with
21 legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with,
22 and represent, the official policy of Defendants.

23 14. At all relevant times, Defendants, and each of them, ratified each and every act or
24 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
25 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
26 alleged.

27 15. Under California law, Defendants are jointly and severally liable as employers for the
28 violations alleged herein because they have each exercised sufficient control over the wages, hours,

1 working conditions, and employment status of Plaintiffs and aggrieved employees. Each Defendant had
2 the power to hire and fire Plaintiffs and aggrieved employees, supervised and controlled their work
3 schedule and/or conditions of employment, determined their rate of pay, and maintained their
4 employment records. Defendants suffered or permitted Plaintiffs and aggrieved employees to work
5 and/or “engaged” Plaintiffs and aggrieved employees so as to create a common-law employment
6 relationship. As joint employers of Plaintiffs and aggrieved employees, Defendants are jointly and
7 severally liable for the civil penalties and all other relief available to Plaintiffs and aggrieved employees
8 under the law.

9 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
10 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and aggrieved
11 employees because Defendants have:

- 12 (a) jointly exercised meaningful control over the work performed by Plaintiffs and
13 aggrieved employees;
- 14 (b) jointly exercised meaningful control over Plaintiffs’ and aggrieved employees’
15 wages, hours, and working conditions, including the quantity, quality standards,
16 speed, scheduling, and operative details of the tasks performed by Plaintiffs and
17 aggrieved employees;
- 18 (c) jointly required that Plaintiffs and aggrieved employees perform work which is
19 an integral part of Defendants’ businesses; and
- 20 (d) jointly exercised control over Plaintiffs and aggrieved employees as a matter of
21 economic reality in that Plaintiffs and aggrieved employees were dependent on
22 Defendants, who shared the power to set the wages of Plaintiffs and aggrieved
23 employees and determined their working conditions, and who jointly reaped the
24 benefits from the underpayment of their wages and noncompliance with other
25 statutory provisions governing their employment.

26 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has
27 existed a unity of interest and ownership between Defendants such that any individuality and
28 separateness between the entities has ceased.

1 18. ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN
2 CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY; ALLIANCE ONCOLOGY, LLC;
3 and DOES 1 through 10 are therefore alter egos of each other.

4 19. Adherence to the fiction of the separate existence of Defendants would permit an abuse
5 of the corporate privilege, and would promote injustice by protecting Defendants from liability for the
6 wrongful acts committed by them under the name ALLIANCE HEALTHCARE.

7 20. Plaintiffs further alleges, upon information and belief, that Defendants ALLIANCE
8 HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
9 ALLIANCE HEALTHCARE RADIOLOGY, ALLIANCE ONCOLOGY, LLC, are alter egos of each
10 other for the following reasons:

- 11 (a) On the California Secretary of State's website
12 (<https://businesssearch.sos.ca.gov/>), ALLIANCE HEALTHCARE SERVICES,
13 INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE
14 HEALTHCARE RADIOLOGY and ALLIANCE ONCOLOGY, LLC share
15 the same entity address and mailing address, "18201 VON KARMAN AVE.,
16 SUITE 600, IRVINE, CA 92612."
17 (b) According to their most recent "Statement of Information" forms filed with the
18 California Secretary of State, ALLIANCE HEALTHCARE SERVICES, INC.
19 WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE
20 HEALTHCARE RADIOLOGY is listed as the managing entity of ALLIANCE
21 ONCOLOGY, LLC;
22 (c) On information and belief, ALLIANCE HEALTHCARE SERVICES, INC.
23 WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE
24 HEALTHCARE RADIOLOGY and ALLIANCE ONCOLOGY, LLC share
25 the same agent for service of process, "C T CORPORATION SYSTEM
26 (CO168406);" and
27 (d) On information and belief, ALLIANCE HEALTHCARE SERVICES, INC.
28 WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE

1 HEALTHCARE RADIOLOGY, ALLIANCE ONCOLOGY, LLC, utilize the
2 same standardized employment forms and issue the same employment policies.

3 **GENERAL ALLEGATIONS**

4 21. Defendants are a national provider of outsourced radiology, oncology, and interventional
5 medical services catering to hospitals, health systems, and physician practices. Defendants reportedly
6 serve over 1,100 hospitals and other healthcare partners in 46 states. Upon information and belief,
7 Defendants maintain a single, centralized Human Resources (“HR”) department at their company
8 headquarters in Irvine, California, which is responsible for the recruiting and hiring of new employees,
9 and communicating and implementing Defendants’ company-wide policies, including timekeeping
10 policies and meal and rest period policies, to employees throughout California.

11 22. In particular, Plaintiffs and aggrieved employees, on information and belief, received the
12 same standardized documents and/or written policies. Upon information and belief, the usage of
13 standardized documents and/or written policies, including new-hire documents, indicate that Defendants
14 dictated policies at the corporate level and implemented them company-wide, regardless of their
15 employees’ assigned locations or positions.

16 23. Upon information and belief, Defendants maintain a centralized Payroll department at
17 their company headquarters in Irvine, California, which processes payroll for all non-exempt, hourly
18 paid employees working for Defendants at their various locations and jobsites in California, including
19 Plaintiffs and aggrieved employees. Based upon information and belief, Defendants issue the same
20 formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their
21 work locations. Upon information and belief, Defendants process payroll for departing employees in the
22 same manner throughout the State of California, regardless of the manner in which each employee’s
23 employment ends.

24 24. Defendants continue to employ non-exempt or hourly paid employees in California.

25 25. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors
27 knowledgeable about California labor and wage law, employment and personnel practices, and about the
28 requirements of California law.

1 26. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and aggrieved
2 employees were not paid for all hours worked because all hours worked were not recorded.

3 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
4 have known that Plaintiffs and aggrieved employees were entitled to receive certain wages for overtime
5 compensation and that they were not receiving certain wages for overtime compensation including for
6 work done off-the-clock which includes, without limitation, time worked that was not recorded and time
7 work performed prior to clocking in, after clocking out, and while clocked out for meal periods.

8 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
9 have known that Plaintiffs and aggrieved employees were entitled to be paid at a regular rate of pay, and
10 corresponding overtime rate of pay, that included as eligible income all remuneration required by law,
11 including but not limited to, all income derived from shift differential pay, incentive pay,
12 nondiscretionary bonuses, and/or other forms of compensation.

13 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
14 have known that Plaintiffs and aggrieved employees were entitled to receive at least minimum wages for
15 compensation and that they were not receiving at least minimum wages for work that was required to be
16 done off-the-clock. In violation of the California Labor Code, Plaintiffs and aggrieved employees were
17 not paid at least minimum wages for work done off-the-clock including, without limitation, work
18 performed prior to clocking in, after clocking out, and while clocked out for meal periods.

19 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
20 have known that Plaintiffs and aggrieved employees were entitled to meal periods in accordance with the
21 Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and aggrieved
23 employees were not provided with all meal periods or payment of one (1) additional hour of pay at their
24 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

25 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
26 have known that Plaintiffs and aggrieved employees were entitled to rest periods in accordance with the
27 Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their
28 regular rates of pay when they were not authorized and permitted to take a compliant rest period. In

1 violation of the California Labor Code, Plaintiffs and aggrieved employees were not authorized and
2 permitted to take compliant rest periods, nor did Defendants provide Plaintiffs and aggrieved employees
3 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
4 authorized and permitted to take a compliant rest period.

5 32. Defendants required Plaintiffs and aggrieved employees to work under unenforceable or
6 invalid alternative work week schedules. The Division of Labor Standards Enforcement does not have
7 record of an alternative work week election filed by Defendants. The Department of Industrial Relations
8 requires employers adopting alternative work week schedules to include the name of the employer
9 reporting the election and deliver within 30 days the results of the election and further notes that the
10 schedules will be searched and subject to public disclosure laws. These requirements are also detailed in
11 Labor Code § 511 and paragraph 3(B) of the applicable IWC Wage Orders.

12 33. Under Defendants' workweek and shift scheduling policy and practice, Defendants
13 generally required a three-day work week, with 12-hour work days. As a result of its invalid alternative
14 work week policy and/or practice, Defendants under-compensated Plaintiffs and aggrieved employees
15 for their working time and systematically reflected fewer overtime hours than they worked.

16 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
17 have known that Plaintiffs and aggrieved employees were entitled to receive complete and accurate wage
18 statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and
19 aggrieved employees were not provided complete and accurate wage statements. Plaintiffs and
20 aggrieved employees further allege that their wage statements did not report premium pay for missed
21 meal and rest breaks in violation of Cal. Labor Code Section 226.7.

22 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
23 have known that they had a duty to maintain accurate and complete payroll records in accordance with
24 the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do
25 so.

26 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
27 have known that Plaintiffs and aggrieved employees were entitled to timely payment of all wages earned
28 upon termination of employment. In violation of the California Labor Code, Plaintiffs and aggrieved

1 employees did not receive payment of all wages due, including, but not limited to, overtime wages,
2 minimum wages, meal and rest period premiums, and/or reporting time and/or “on-call” pay, within
3 permissible time periods.

4 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
5 have known that Plaintiffs and aggrieved employees were entitled to timely payment of wages during
6 their employment. In violation of the California Labor Code, Plaintiffs and aggrieved employees did not
7 receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal and
8 rest period premiums, and/or reporting time and/or “on-call” pay, within permissible time periods.

9 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, that Defendants knew or should have known that they had a duty to cover the costs and
11 expenses Plaintiffs and aggrieved employees incurred obtaining mandatory physical examinations and/or
12 drug tests, but willfully, knowingly, and intentionally failed to do so.

13 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
14 have known that Plaintiffs and aggrieved employees were entitled to one day’s rest in seven. In violation
15 of the California Labor Code, Defendants required Plaintiffs and aggrieved employees to work more
16 than six consecutive days without a day of rest, where the total hours worked exceeded 30 hours in any
17 week or six hours in any one day thereof.

18 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
19 have known that Plaintiffs and aggrieved employees were entitled to receive all reporting time pay when
20 Defendants required Plaintiffs and aggrieved employees were required to report to work but were put to
21 work for less than half of their regular scheduled shift. In violation of the California Labor Code,
22 Plaintiffs and aggrieved employees were not paid all reporting time pay.

23 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
24 have known that Plaintiffs and aggrieved employees were entitled to receive full reimbursement for all
25 business-related expenses and costs they incurred during the course and scope of their employment and
26 that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

27 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiffs

1 and/or aggrieved employees with written notice of the material terms of their employment with
2 Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly, and
3 intentionally failed to do so.

4 43. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and
6 aggrieved employees for all hours worked, and that Defendants had the financial ability to pay such
7 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to
8 Plaintiffs and aggrieved employees that they were properly denied wages, all in order to increase
9 Defendants' profits.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 44. At all times herein set forth, PAGA provides that any provision of law under the Labor
12 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by
13 the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an
14 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and
15 other current or former employees pursuant to procedures outlined in California Labor Code section
16 2699.3.

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

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

23 47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
24 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have
25 been met:

- 26 (a) The aggrieved employee or representative shall give written notice by online
27 filing with the LWDA and by certified mail to the employer of the specific
28 provisions of the California Labor Code alleged to have been violated, including

1 the facts and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a)
3 and any employer response to that notice shall be accompanied by a filing fee of
4 seventy-five dollars (\$75).

5 (c) The LWDA shall notify the employer and the aggrieved employee or
6 representative by certified mail that it does not intend to investigate the alleged
7 violation ("LWDA's Notice") within sixty (60) calendar days of the postmark
8 date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or
9 if no LWDA Notice is provided within sixty-five (65) calendar days of the
10 postmark date of the aggrieved employee's notice, the aggrieved employee may
11 commence a civil action pursuant to California Labor Code section 2699 to
12 recover civil penalties.

13 48. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through
14 Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those
15 listed in Section 2699.5 after the following requirements have been met:

16 (a) The aggrieved employee or representative shall give written notice by online
17 filing with the LWDA and by certified mail to the employer of the specific
18 provisions of the California Labor Code alleged to have been violated (other
19 than those listed in Section 2699.5), including the facts and theories to support
20 the alleged violation.

21 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c)
22 and any employer response to that notice shall be accompanied by a filing fee of
23 seventy-five dollars (\$75).

24 (c) The employer may cure the alleged violation within thirty-three (33) calendar
25 days of the postmark date of the notice sent by the aggrieved employee or
26 representative. The employer shall give written notice within that period of time
27 by certified mail to the aggrieved employee or representative and by online
28 filing with the LWDA if the alleged violation is cured, including a description of

actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

49. On March 17, 2020, Plaintiff Espinosa provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Espinosa's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Espinosa's written notice and assigned Plaintiff Espinosa PAGA Case Number LWDA-CM-778719-20. A true and correct copy of Plaintiff Espinosa's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1," and incorporated by reference as though set forth in full herein.

50. On December 21, 2020, Plaintiff Rice provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Rice's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff Rice's written notice to the LWDA and Defendants is attached hereto as "Exhibit 2," and incorporated by reference as though set forth in full herein.

51. As of the filing date of this Second Amended Complaint, over 65 days have passed since Plaintiffs sent the notices described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

52. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.7, 510, 512, 516, 551, 552, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

53. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating

1 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
2 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
3 pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred
4 dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid .
5 . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
6 to any other civil or criminal penalty provided by law.”

7 54. Defendants, at all times relevant to this complaint, were employers or persons acting on
8 behalf of an employer(s) who violated Plaintiffs’ and other aggrieved employees’ rights by violating
9 various sections of the California Labor Code as set forth above.

10 55. As set forth below, Defendants have violated numerous provisions of both the Labor
11 Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

12 56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a),
13 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as a private attorney
14 general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees,
15 and the State of California against Defendants for violations of California Labor Code sections 201, 202,
16 203, 204, 222.5, 226, 226.7, 510, 512, 516, 551, 552, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2802,
17 and 2810.5.

18 **FIRST CAUSE OF ACTION**

19 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

20 **(Against all Defendants)**

21 57. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each and every
22 allegation set forth above.

23 58. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil
24 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.
25 Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 511,
26 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
27 aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code
28 sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

1 59. Defendants' conduct, as alleged herein, violates numerous sections of the California
2 Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510, 511, 1198, and the applicable IWC wage
4 order for Defendants' failure to compensate Plaintiffs and other aggrieved
5 employees with all required overtime pay and failure to properly calculate the
6 overtime rates paid to other aggrieved employees, as alleged herein;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the
8 applicable IWC wage order for Defendants' failure to compensate Plaintiffs and
9 other aggrieved employees with at least minimum wages for all hours worked,
10 as alleged herein;
- 11 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC
12 wage order for Defendants' failure to provide Plaintiffs and other aggrieved
13 employees with meal periods, as alleged herein;
- 14 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC
15 wage order for Defendants' failure to authorize and permit Plaintiffs and other
16 aggrieved employees to take rest periods, as alleged herein;
- 17 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage
18 order for failure to provide accurate and complete wage statements to Plaintiffs
19 and other aggrieved employees, as alleged herein;
- 20 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage
21 order for failure to maintain payroll records as alleged herein;
- 22 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned
23 wages upon termination as alleged herein;
- 24 (h) Violation of Labor Code section 204 for failure to pay all earned wages during
25 employment, as alleged herein;
- 26 (i) Violation of Labor Code section 222.5 for failure to compensate Plaintiffs and
27 other aggrieved employees for mandatory physical examinations and/or drug
28 testing as set forth below;

- 1 (j) Violation of Labor Code sections 551 and 552 for failure to provide one day's
2 rest in seven to Plaintiffs and other aggrieved employees, as alleged herein;
- 3 (k) Violation of Labor Code section 1198 and the applicable IWC wage order for
4 failure to pay reporting time pay when Plaintiffs and other aggrieved employees
5 were put to work for less than half of their regular scheduled shifts, as alleged
6 herein;
- 7 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and
8 other aggrieved employees for all business expenses necessarily incurred, as
9 alleged herein; and
- 10 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide
11 written notice of information material to other aggrieved employees'
12 employment with Defendants, as set forth below.

13 60. At all relevant times herein, California Labor Code section 222.5 requires employers to
14 pay for the costs an employee incurs for obtaining any medical or physical examination taken.

15 61. At all times relevant herein, Defendants implemented, on a company-wide basis, an
16 employer-imposed requirement that Plaintiffs and other aggrieved employees undergo mandatory
17 physical examinations, TB testing, and/or drug testing, including flu shots, but required them to do so at
18 their own expense. As stated, Defendants had a company-wide policy requiring that all employees,
19 including Plaintiffs and other aggrieved employees, travel to an authorized medical clinic on their own
20 time and using their own personal vehicles to undergo physical examinations, TB testing, and/or drug
21 testing. At all times, Defendants were in control of scheduling the date and time for the examinations
22 and/or testing, selecting the provider/clinic where the examinations and/or testing were to take place, and
23 determining the scope of the examinations and/or testing.

24 62. During the relevant time period, Plaintiffs were instructed by Defendants to travel to
25 Defendants' designated medical facility and obtain annual TB testing and flu shots. Plaintiffs followed
26 Defendants' instructions, traveled to the medical facility authorized by Defendants, and underwent the
27 flu shot and TB testing. Plaintiffs were required to travel to and from the medical facilities selected by
28 Defendants using their own vehicle. Plaintiff Espinosa followed Defendants' instructions and drove 5-6

miles roundtrip to and from the medical facilities designated by Defendants, and then spent 1-2 hours waiting at the medical facilities and undergoing the requisite treatment and testing.

63. However, Defendants did not compensate Plaintiffs and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the physical examinations, TB testing, and/or drug testing, including flu shots, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. Defendants' policy and/or not paying for all costs Plaintiffs and other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, and/or drug testing is in violation of California Labor Code section 222.5. Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

64. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

65. During the relevant time period, Defendants failed to provide other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PAY OVERTIME

Violation of California Labor Code §§ 510, 511 and 1198

66. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

67. Labor Code section 1198 makes it illegal to employ an employee under conditions of

1 labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that
2 “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of
3 labor for employees. The employment of any employee . . . under conditions of labor prohibited by the
4 order is unlawful.”

5 68. California Labor Code section 1198 and the applicable IWC Wage Order provide that it
6 is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or
7 two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a
8 daily or weekly basis.

9 69. Specifically, the applicable IWC Wage Order provides that Defendants are and were
10 required to pay Plaintiffs and aggrieved employees working more than eight (8) hours in a day or more
11 than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess
12 of eight (8) hours in a day or more than forty (40) hours in a workweek.

13 70. The applicable IWC Wage Order further provides that Defendants are and were required
14 to pay Plaintiffs and aggrieved employees working more than twelve (12) hours in a day, overtime
15 compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay
16 includes all remuneration for employment paid to, or on behalf of, the employee, including
17 nondiscretionary bonuses and incentive pay.

18 71. California Labor Code section 510 codifies the right to overtime compensation at one
19 and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or
20 forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to
21 overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve
22 (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

23 72. During the relevant time period, Defendants willfully failed to pay all overtime wages
24 owed to Plaintiffs and aggrieved employees. During the relevant time period, Plaintiffs and aggrieved
25 employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours
26 in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because
27 all hours worked were not recorded.

28 73. First, during the relevant time period, Defendants had a company-wide “on-call” policy,

1 whereby they scheduled Plaintiffs and aggrieved employees to work “on-call” shifts. During an “on-
2 call” shift, Plaintiffs and aggrieved employees had to be available and report to work within 30 minutes
3 of receiving a call from Defendants notifying them that they needed to work. When scheduled to be “on-
4 call,” Plaintiffs and aggrieved employees were in essence on controlled standby for Defendants because
5 they could not use that time freely for their own purposes and were forced to put their lives on hold.
6 When assigned an “on-call” shift, Plaintiffs refrained from making plans because they knew that they
7 had to drop whatever they were doing at a moment’s notice if they received a call from Defendants to
8 report to work. For example, Plaintiffs refrained from recreational activities and traveling long distances
9 when they were “on-call,” because they had to ensure they could get ready and arrive to the hospital
10 within Defendants’ requisite 30-minute time frame. Defendants paid Plaintiffs and aggrieved employees
11 a reduced rate of \$5.00 per hour for working an “on-call” shift. However, Defendants failed to fully pay
12 Plaintiffs and aggrieved employees for the time during which they were waiting to receive a call from
13 Defendants and unable to use their time for their own purposes.

14 74. Second, during the relevant time period, Defendants had company-wide policies and/or
15 practices of often staffing only one employee per worksite, which resulted in Plaintiffs and aggrieved
16 employees working during unpaid meal periods. Because Defendants understaffed their assignments
17 and utilized a single-staffing model for some of their worksites, there was no one available to relieve
18 Plaintiffs and aggrieved employees for meal periods. Defendants’ uniform adoption of a single-staffing
19 model for their business required Plaintiffs and aggrieved employees to remain on-duty, including during
20 meal periods; thus, there was no one available to provide meal period coverage to employees. As a
21 result, Plaintiffs and aggrieved employees were forced to remain on-duty and work during their unpaid
22 meal periods, handling patient examinations and other work-related tasks. At all relevant times,
23 Defendants knew or should have known that their single-staffing model required Plaintiffs and aggrieved
24 employees to perform their assigned duties during unpaid meal periods.

25 75. Third, during the relevant time period, Defendants had, and continue to have, a
26 company-wide policy and/or practice of understaffing their worksites, while assigning heavy workloads,
27 resulting in a failure to provide Plaintiffs and aggrieved employees with adequate meal period coverage.
28 As a result of this lack of meal period coverage, Plaintiffs and aggrieved employees were not always

1 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
2 period. For example, Plaintiffs and aggrieved employees were required to perform their duties, such as
3 attending to patients, cleaning the machines and facilities as needed, and receiving assignments from
4 Defendants' supervisors, during unpaid meal periods, or would have their meal periods interrupted to
5 complete such work-related tasks. Thus, Plaintiffs and aggrieved employees missed or had meal periods
6 interrupted in order to complete their assigned workloads. Defendants did not pay Plaintiffs and
7 aggrieved employees for the time they continued to perform tasks during meal periods.

8 76. Fourth, Defendants, on a company-wide basis, had a practice of failing to schedule meal
9 periods, which further caused Plaintiffs and aggrieved employees to not be relieved of their duties for
10 compliant meal periods. As a result of these policies and/or practices, Plaintiffs and aggrieved
11 employees were required to work through and/or to return early from meal periods, in order to complete
12 their assigned tasks. Further, on information and belief, because Defendants frowned upon employees
13 accruing meal period penalties, Defendants pressured Plaintiffs and aggrieved employees to clock out for
14 meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of
15 whether they had received a compliant meal period or not, in order to strictly limit meal penalties that
16 Defendants would otherwise owe. Thus, Plaintiffs and aggrieved employees performed work during
17 meal periods for which they were not paid.

18 77. Fifth, during the relevant period, Defendants had, and continue to have, a company-wide
19 policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For
20 example, prior to clocking in at the start of their scheduled shifts or after clocking out at the end of their
21 shifts, Plaintiffs would also receive phone calls and notifications on their personal cellular phones from
22 their supervisors regarding upcoming assignments and important industry updates and guidelines.
23 Additionally, Defendants required Plaintiffs and aggrieved employees to complete online training
24 modules from home but did not compensate them for their actual hours spent completing them. Instead,
25 Defendants' management came up with arbitrary time limitations for completing the modules and only
26 paid Plaintiffs and aggrieved employees for the time Defendants believed it should take to complete
27 the requisite training, rather than the actual time Plaintiffs and aggrieved employees spent completing the
28 training. For example, Plaintiff Espinosa spent approximately 9.5 hours completing Defendants'

1 requisite online training modules, but was not paid for all of his time. Thus, Defendants failed to
2 correctly track this time spent working outside of their scheduled shifts, and Plaintiffs and aggrieved
3 employees received no compensation for this time. Additionally, Plaintiff Rice, who worked in
4 Defendant's MRI mobile unit, was frequently required to perform quality control of the MRI unit, both
5 prior to and after the end of his shifts without compensation. He spent approximately 1 hour performing
6 quality control for which he did not receive compensation.

7 78. Defendants knew or should have known that as a result of these company-wide practices
8 and/or policies, Plaintiffs and aggrieved employees were performing assigned duties during their meal
9 periods and performing work off-the-clock, and were suffered or permitted to perform work for which
10 they were not paid. Because Plaintiffs and aggrieved employees worked shifts of eight (8) hours a day or
11 more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
12 premium pay. Therefore, Plaintiffs and aggrieved employees were not paid overtime wages for all of the
13 overtime hours they actually worked.

14 79. Furthermore, Defendants did not pay Plaintiffs and aggrieved employees the correct
15 overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage,
16 Defendants paid Plaintiffs and aggrieved employees shift differential pay, incentive pay,
17 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California
18 Labor Code, Defendants failed to incorporate all compensation, including but not limited to, all incentive
19 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular
20 rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiffs
21 and aggrieved employees worked overtime and received these other forms of pay, Defendants failed to
22 pay all overtime wages by paying a lower overtime rate than required.

23 80. Specifically, Defendants paid Plaintiffs and aggrieved employees nondiscretionary
24 bonuses or incentive pay for receiving recognition from other employees and achieving perfect
25 attendance. On information and belief, this nondiscretionary bonus and/or incentive pay was listed on
26 Plaintiffs' and aggrieved employees' wage statements as "Rewards & Recog," "Bonus Misc," and "Perf.
27 Att. Awar." During pay periods that Plaintiffs and aggrieved employees were paid overtime and double
28 time wages, Defendants failed to incorporate the nondiscretionary bonus and/or incentive pay into

1 Plaintiffs' and aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower
2 rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiffs and aggrieved
3 employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants'
4 failure to properly calculate the overtime and double time rates of pay based on all remuneration paid has
5 resulted in an underpayment of overtime and double time wages to Plaintiffs and aggrieved employees
6 on a company-wide basis.

7 81. Defendants also required Plaintiffs and aggrieved employees to work under
8 unenforceable or invalid alternative work week schedules. Under Defendants' workweek and shift
9 scheduling policy and practice, Defendants generally required a three-day work week, with 12-hour
10 work days. The Division of Labor Standards Enforcement does not have record of an alternative work
11 week election filed by Defendants. As a result of its invalid alternative work week policy and/or
12 practice, Defendants under-compensated Plaintiffs and aggrieved employees for their working time and
13 systematically reflected fewer overtime hours than they worked.

14 82. Defendants' failure to pay Plaintiffs and aggrieved employees the balance of overtime
15 compensation as required by California law, violates the provisions of California Labor Code sections
16 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and aggrieved employees are
17 entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

18 **FAILURE TO PAY MINIMUM WAGES**

19 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198**

20 83. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
21 allegation set forth above.

22 84. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
23 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid
24 to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable
25 work time is defined in Wage Order No. 5 as "the time during which an employee is suffered or
26 permitted to work for the employer, whether or not required to do so, as interpreted in accordance with
27 the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours
28 Worked").

1 85. As set forth above, Defendants systematically, and on a company-wide basis, required
2 Plaintiffs and aggrieved employees to work “on-call” shifts during which they had to put their lives on
3 hold and were restricted from using that time freely for their own purposes. Even though Plaintiffs and
4 aggrieved employees were subject to Defendants’ control during an “on-call” shift, Defendants did not
5 pay Plaintiffs and aggrieved employees at least minimum wages for all hours that they were suffered or
6 permitted to work. And, as stated above, due to Defendants’ policy and/or practice of single-staffing
7 and/or understaffing while assigning heavy workloads and failing to adhere to a schedule of meal
8 periods, Plaintiffs and aggrieved employees were forced to forego meal periods, have their meal periods
9 interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated,
10 Plaintiffs and aggrieved employees were required to work off-the-clock outside of their scheduled shifts
11 to complete assigned job duties and online training modules, time for which they were not fully paid.

12 86. Further, Defendants maintained and implemented a company-wide policy of requiring
13 all employees to travel to a medical clinic on their own time and using their own personal vehicles to
14 undergo mandatory physical examinations, tuberculin (TB) testing, and/or drug testing, including
15 obtaining flu shots, upon hiring and periodically thereafter. At all times, Defendants were in control of
16 scheduling the date and time for the testing and/or physical examinations, selecting the provider or clinic
17 where the testing and/or physical examinations were to take place, and determining the scope of the
18 testing and/or physical examinations. For example, Defendants gave Plaintiffs strict instructions to
19 obtain annual flu shots and TB tests, and Plaintiffs underwent the examination and testing for the sole
20 benefit of Defendants. Each time, Plaintiffs followed Defendants’ instructions and traveled several miles
21 to and from the medical clinics authorized by Defendants, and spent several hours waiting at the medical
22 clinic and undergoing the requisite treatment and/or testing. However, Defendants did not compensate
23 Plaintiffs and aggrieved employees for the time they spent traveling to and undergoing the mandatory
24 physical examinations, TB testing, and/or drug testing.

25 87. Defendants did not pay minimum wages for off-the-clock hours that Plaintiffs and
26 aggrieved employees worked through that qualified for overtime premium payment. To the extent that
27 these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least
28 minimum wages for those hours worked off-the-clock in violation of California Labor Code sections

1 1182.12, 1194, 1197, 1197.1, and 1198.

2 88. Defendants' failure to pay Plaintiffs and aggrieved employees minimum wages violates
3 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor
4 Code section 1194.2, Plaintiffs and aggrieved employees are entitled to recover liquidated damages in an
5 amount equal to the wages unlawfully unpaid and interest thereon.

6 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

7 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198**

8 89. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
9 allegation set forth above.

10 90. At all relevant times herein set forth, California Labor Code section 512(a) provides that
11 an employer may not require, cause, or permit an employee to work for a period of more than five (5)
12 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,
13 except that if the total work period per day of the employee is not more than six (6) hours, the meal
14 period may be waived by mutual consent of both the employer and the employee. Under California law,
15 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.
16 4th 1004, 1041-1042 (Cal. 2012).

17 91. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516,
18 and 1198 provide that no employer shall require an employee to work during any meal period mandated
19 by an applicable order of the IWC.

20 92. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the
21 applicable IWC Wage Order also require employers to provide a second meal period of not less than
22 thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1)
23 additional hour of pay at the employee's regular rate, except that if the total hours worked is no more
24 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
25 the employee only if the first meal period was not waived. The applicable IWC Wage Order further
26 provides that employees in the health care industry who work shifts in excess of eight (8) hours in a
27 workday may waive one of their two meal periods, if the waiver is signed by both the employee and
28 employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

1 93. First, during the relevant period, as stated, Defendants had company-wide policies
2 and/or practices of often staffing only one employee per location, which resulted in Plaintiffs and
3 aggrieved employees working during unpaid meal periods or taking their meal periods late. Because
4 Defendants utilized a single-staffing model and/or understaffed their worksites, there was no one
5 available to relieve Plaintiffs and aggrieved employees needing meal period coverage. Defendants'
6 uniform adoption of a single-staffing model for their business required Plaintiffs and aggrieved
7 employees to remain on-duty, including during meal periods; thus, there was no one available to provide
8 meal period coverage to employees. As a result, Plaintiffs and aggrieved employees were forced to
9 remain on-duty and work during their unpaid meal periods, handling patient examinations. At all
10 relevant times, Defendants knew or should have known that their single-staffing model required
11 Plaintiffs and aggrieved employees to perform their assigned duties during unpaid meal periods.

12 94. Second, during the relevant period, as stated, Defendants had, and continue to have, a
13 company-wide policy and/or practice of understaffing while assigning heavy workloads. Additionally,
14 Defendants, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods,
15 which further caused Plaintiffs and aggrieved employees to not be relieved of their duties for compliant
16 meal periods. As a result, Plaintiffs and aggrieved employees had their meal periods cut short and/or
17 took them late.

18 95. Defendants' practice of single-staffing and/or understaffing, coupled with Defendants'
19 practice of assigning heavy workloads, and failure to adhere to a schedule of meal periods, prevented
20 Plaintiffs and aggrieved employees from taking all compliant meal periods to which they were entitled.
21 As a result, Plaintiffs and aggrieved employees would be forced to work in excess of five (5) hours
22 before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their
23 meal periods altogether. For example, during their employment, Plaintiffs would start their meal periods
24 late due to the heavy workload and lack of coverage, would have their meal periods interrupted by their
25 supervisors wanting to discuss work-related matters, and would have their meal periods cut short due to
26 inadequate time built in between patients' appointments and inadequate time to prepare for patients
27 requiring additional assistance.

28 96. Third, on information and belief, because Defendants frowned upon employees accruing

1 meal period penalties, Defendants' management would adjust Plaintiffs' and aggrieved employees' time
2 records and/or pressured employees to clock out for meal periods to reflect compliant meal periods,
3 regardless of whether they had received a compliant meal period or not, in order to strictly limit meal
4 penalties that would need to be paid by Defendants. However, Plaintiffs and aggrieved employees
5 worked through meal periods or had their meal periods interrupted, because there were not enough
6 employees on duty to handle the workload.

7 97. Fourth, during the relevant time period, Plaintiffs and aggrieved employees worked
8 shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For
9 example, Plaintiffs missed their second meal period when they worked shifts in excess of ten (10) hours.

10 98. Plaintiffs and aggrieved employees did not sign valid meal period waivers on days that
11 they were entitled to meal periods and were not relieved of all duties. Defendants did not present
12 Plaintiffs and aggrieved employees with the opportunity to voluntarily choose whether to waive their
13 first or second 30-minute meal period on any given day. Instead, Defendants had a company-wide
14 policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of
15 hire. For example, Plaintiffs signed Defendants' blanket "Meal Break Waiver" and "Meal Break Waiver
16 (shifts of 6 hours or less)" forms near the time they were hired on September 7, 2006. Because
17 Defendants took the position that non-exempt, hourly paid employees had waived their rights to one for
18 their two meal periods for the entirety of their employment, Defendants did not provide them with all
19 meal periods to which they were entitled.

20 99. Defendants' company-wide use of blanket meal period waivers signed at or near the
21 time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged
22 and impeded Plaintiffs and aggrieved employees from taking all meal periods to which they were
23 entitled. And, Defendants' presumption that second meal periods would not be provided for shifts in
24 excess of ten (10) hours due to blanket second meal period waivers discouraged Plaintiffs and aggrieved
25 employees from taking second meal periods.

26 100. At all times herein mentioned, Defendants knew or should have known that, as a result
27 of these policies, Plaintiffs and aggrieved employees were prevented from being relieved of all duties
28 and required to perform some of their assigned duties during meal periods. Defendants further knew or

1 should have known that Defendants did not pay Plaintiffs and aggrieved employees meal period
2 premium wages when meal periods were late, interrupted, shortened, or missed, because Defendants
3 adjusted employee time records to reflect compliant meal periods, even if none were taken.

4 101. Moreover, Defendants engaged in a company-wide practice and/or policy of not paying
5 all meal period premiums owed when compliant meal periods are not provided. Because of Defendants'
6 practices and/or policies, Plaintiffs and aggrieved employees have not received premium pay for all
7 missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay Plaintiffs
8 and aggrieved employees premium pay for missed, late, and interrupted meal periods, Defendants did
9 not pay Plaintiffs and aggrieved employees at the correct rate of pay for premium wages because
10 Defendants systematically failed to include all forms of compensation, such as shift differential pay,
11 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.
12 As a result, Defendants failed to provide Plaintiffs and aggrieved employees compliant meal periods in
13 violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
14 premiums due.

15 102. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
16 Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and aggrieved employees are therefore entitled to
17 recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation
18 for each work day that the meal period was not provided.

19 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

20 **Violation of California Labor Code §§ 226.7, 516, and 1198**

21 103. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
22 allegation set forth above.

23 104. At all relevant times herein set forth, the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and aggrieved employees'
25 employment by Defendants.

26 105. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
27 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
28 middle of each work period" and that the "rest period time shall be based on the total hours worked daily

1 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total
2 daily work time is less than three and one-half (3½) hours.

3 106. At all relevant times, California Labor Code section 226.7 provides that no employer
4 shall require an employee to work during any rest period mandated by an applicable order of the
5 California IWC. To comply with its obligation to authorize and permit rest periods under California
6 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any
7 control over how employees spend their break time, and relieve their employees of all duties —
8 including the obligation that an employee remain on call. A rest period, in short, must be a period of
9 rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the
10 applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and aggrieved
11 employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of
12 pay for each work day that a required rest period was not authorized and permitted.

13 107. During the relevant time period, Defendants regularly failed to authorize and permit
14 Plaintiffs and aggrieved employees to take a ten (10) minute rest period per each four (4) hour period
15 worked or major fraction thereof. As with meal periods, Defendants’ company-wide practices, including
16 assigning heavy workloads and single-staffing/understaffing their worksites, prevented Plaintiffs and
17 aggrieved employees from being relieved of all duty to take their rest periods. Additionally, Defendants
18 failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
19 coverage, further led to Plaintiffs and aggrieved employees not being authorized and permitted to take
20 compliant rest periods.

21 108. Furthermore, upon information and belief, during the relevant time period, Defendants
22 maintained implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs
23 and aggrieved employees remain on the work premises during their rest periods. Upon information and
24 belief, Defendants’ company-wide on-premises rest period policy prevented Plaintiffs and aggrieved
25 employees from being relieved of all duties for rest periods and caused them to perform work during rest
26 periods.

27 109. As a result of Defendants’ practices and policies, Plaintiffs and aggrieved employees
28 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving

1 all uninterrupted 10-minute rest periods to which they were entitled. For example, during their
2 employment, Plaintiffs missed their rest periods or had them cut short or interrupted, due to Defendants'
3 policy of assigning heavy workloads and failing to provide sufficient coverage. Plaintiffs also took their
4 rest periods late due to Defendants' understaffing and lack of rest period coverage.

5 110. Defendants have also engaged in a systematic, company-wide practice and/or policy of
6 not paying rest period premiums owed when rest periods are not authorized and permitted.
7 Alternatively, to the extent that Defendants did pay Plaintiffs and aggrieved employees one (1) additional
8 hour of premium pay for missed rest periods, Defendants did not pay Plaintiffs and aggrieved employees
9 at the correct rate of pay for premium wages because Defendants failed to include all forms of
10 compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms
11 of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiffs and aggrieved
12 employees rest periods and failed to pay them rest period premium wages due, in violation of Labor
13 Code section 226.7, 516, and the applicable IWC Wage Order.

14 111. Defendants' conduct violates the applicable IWC Wage Order and California Labor
15 Code sections 226.7, 516, and 1198. Plaintiffs and aggrieved employees are therefore entitled to recover
16 from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each
17 work day that a compliant rest period was not authorized and permitted.

18 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

19 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198**

20 112. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
21 allegation set forth above.

22 113. At all relevant times herein set forth, California Labor Code section 226(a) provides that
23 every employer shall furnish each of his or her employees an accurate and complete itemized wage
24 statement in writing, including, but not limited to, the name and address of the legal entity that is the
25 employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

26 114. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs
27 and aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example,
28 Defendants issued uniform wage statements to Plaintiffs and aggrieved employees that fail to correctly

list: gross wages earned; total hours worked; net wages earned; the name of the legal entity of the actual employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

115. Because Defendants did not record the time Plaintiffs and aggrieved employees spent working off the clock and deducted time from Plaintiffs' and aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and aggrieved employees, including all meal and rest period premium wages earned, in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and aggrieved employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

116. The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

117. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiffs and aggrieved employees, in violation of section

1 1198. As stated, on information and belief, Defendants engaged in a company-wide practice and/or
2 policy of falsifying Plaintiffs' and aggrieved employees' time records by recording that compliant meal
3 periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep
4 accurate records of meal start and end times for Plaintiffs and aggrieved employees. Furthermore,
5 because of Defendants' failure to provide Plaintiffs and aggrieved employees with second 30-minute
6 meal periods to which they were entitled, Defendants kept no records of meal start and end times for
7 second meal periods.

8 118. California Labor Code section 1174(d) provides that "[e]very person employing labor in
9 this state shall ... [k]eep a record showing the names and addresses of all employees employed and the
10 ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at
11 which employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments" At all relevant times, and in violation of Labor
14 Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and
15 aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of
16 failing to record the off-the-clock hours that they worked.

17 119. Plaintiffs and aggrieved employees are entitled to recover from Defendants the greater of
18 their actual damages caused by Defendants' failure to comply with California Labor Code section
19 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

20 **FAILURE TO PAY WAGES UPON TERMINATION**

21 **Violation of California Labor Code §§ 201 and 202**

22 120. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
23 allegation set forth above.

24 121. This cause of action is dependent upon, and wholly derivative of, the overtime wages,
25 minimum wages, meal and rest period premium wages, and/or reporting time and/or "on-call" pay that
26 were not timely paid to Plaintiffs and those aggrieved employees no longer employed by Defendants
27 upon their termination.

28 122. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an

1 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
2 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
3 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has
4 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
5 is entitled to his or her wages at the time of quitting.

6 123. Defendants willfully failed to pay Plaintiffs and aggrieved employees who are no longer
7 employed by Defendants the earned and unpaid wages set forth above, including but not limited to,
8 overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time and/or
9 “on-call” pay, either at the time of discharge, or within seventy-two (72) hours of their leaving
10 Defendants’ employ.

11 124. Defendants’ failure to pay Plaintiffs and aggrieved employees who are no longer
12 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two
13 (72) hours of their leaving Defendants’ employ, violates Labor Code sections 201 and 202. Plaintiffs
14 and aggrieved employees are therefore entitled to recover from Defendants the statutory penalty wages
15 for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to
16 California Labor Code section 203.

17 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

18 **Violation of California Labor Code § 204**

19 125. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
20 allegation set forth above.

21 126. This cause of action is dependent upon, and wholly derivative of, the overtime wages,
22 minimum wages, meal and rest period premium wages, and/or reporting time pay, that were not timely
23 paid to Plaintiffs and those aggrieved employees by Defendants during their employment.

24 127. At all times relevant herein set forth, Labor Code section 204 provides that all wages
25 earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive,
26 of any calendar month, other than those wages due upon termination of an employee, are due and
27 payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the
28 labor was performed.

1 128. At all times relevant herein, Labor Code section 204 provides that all wages earned by
2 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar
3 month, other than those wages due upon termination of an employee, are due and payable between the
4 first (1st) and the tenth (10th) day of the following month.

5 129. At all times relevant herein, Labor Code section 204 provides that all wages earned for
6 labor in excess of the normal work period shall be paid no later than the payday for the next regular
7 payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the
8 requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or
9 semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of
10 the payroll period.

11 130. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
12 aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal
13 and rest period premium wages, and/or reporting time and/or “on-call” pay, within the time periods
14 specified by California Labor Code section 204.

15 131. Defendants’ failure to pay Plaintiffs and aggrieved employees all wages due violates
16 Labor Code section 204. Plaintiffs and aggrieved employees are therefore entitled to recover from
17 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

18 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**

19 **Violation of California Labor Code §§ 551, 552, and 558**

20 132. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
21 allegation set forth above.

22 133. At all relevant times herein, California Labor Code section 551 provides that every
23 person employed in any occupation of labor is entitled to one day’s rest in seven. Additionally,
24 California Labor Code section 552 prohibits employers from requiring employees to work more than six
25 consecutive days without a day of rest.

26 134. At all relevant times herein set forth, California Labor Code section 556 exempts an
27 employer from the day-of-rest requirement when the total hours worked by an employee do not exceed
28 30 hours in any week or six hours in any one day thereof.

1 135. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of
2 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
3 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
4 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid . . . in addition to an amount
8 sufficient to recover underpaid wages .” Labor Code section 558(c) provides “[t]he civil penalties
9 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

10 136. During the relevant time period, Defendants sometimes scheduled Plaintiffs and
11 aggrieved employees to work six (6) or more hours per day and more than seven (7) consecutive days in
12 a workweek. For example, Plaintiff Espinosa was scheduled for seven (7) consecutive days of work
13 from March 11, 2019, through March 21, 2019. Throughout his employment, Plaintiff Espinosa worked
14 seven (7) consecutive days several times per year. Because Plaintiff Espinosa and aggrieved employees
15 worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt
16 from the day-of-rest requirement. To the extent that Plaintiffs and aggrieved employees may have
17 signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

18 137. Thus, during the relevant time period, and in violation of Labor Code sections 551 and
19 552, Defendants willfully caused Plaintiffs and aggrieved employees to work more than six days in
20 seven. Plaintiffs and aggrieved employees are therefore entitled to recover civil penalties pursuant to
21 Labor Code section 558.

22 **FAILURE TO PROVIDE REPORTING TIME PAY**

23 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050**

24 **Subdivision 5(A)**

25 138. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
26 allegation set forth above.

27 139. California Labor Code section 1198 dictates that no employer may employ an employee
28 under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code

1 section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be
2 the . . . standard conditions of labor for employees. The employment of any employee . . . under
3 conditions of labor prohibited by the order is unlawful.”

4 140. The applicable IWC wage order, California Code of Regulations, Title 8, section
5 11050(5)(A), provides that “[e]ach workday an employee is required to report for work and does report,
6 but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the
7 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
8 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the
9 minimum wage.”

10 141. During the relevant time period, Defendants violated California Labor Code section
11 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay
12 Plaintiffs and aggrieved employees reporting time pay when they reported to work for their scheduled
13 shift but were put to work for less than half of the regularly scheduled day’s work.

14 142. First, Defendants failed to pay Plaintiffs and aggrieved employees reporting time pay
15 when they presented themselves ready for work by waiting at home during a scheduled “on-call” shift
16 and awaiting instructions on whether to show up at the hospital, but ultimately were not called.
17 Defendants did not pay Plaintiffs and aggrieved employees for at least half of their scheduled day’s work
18 when they were subject to Defendants’ on-call policy and were not called or told not to come into the
19 hospital. For example, during the relevant time period, Plaintiffs waited at home during their scheduled
20 “on-call” or “standby” shift as required by Defendants’ on-call policy, but were sometimes not called or
21 told that the hospital did not need them to work. When this occurred, Defendants did not pay them for at
22 least half of their scheduled standby time or the required minimum reporting time pay.

23 143. Second, Defendants had a company-wide practice of sending Plaintiffs and aggrieved
24 employees home early from their shifts, including before they had worked at least half of their regular
25 shift, but would not pay Plaintiffs and aggrieved employees for half of their scheduled shift. For
26 example, Defendants assigned Plaintiff Espinosa to a facility which had persistent technological issues
27 for a week during January 2018. Plaintiffs would report to work, but would be sent home early by
28 Defendants’ management due to the technological issues which were out of Plaintiffs’ control. Although

1 Plaintiffs and aggrieved employees would report to work based on the schedule that Defendants
2 provided to them, Defendants would send them home before they had worked at least half of their
3 scheduled shifts without giving them reporting time pay.

4 144. Accordingly, Plaintiffs and aggrieved employees were not properly compensated with
5 reporting time pay in violation of California Labor Code section 1198.

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **Violation of California Labor Code § 2802**

8 145. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
9 allegation set forth above.

10 146. At all times herein set forth, California Labor Code section 2802 provides that an
11 employer must reimburse employees for all necessary expenditures and losses incurred by the employee
12 in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers
13 from passing off their cost of doing business and operating expenses on to their employees. *Cochran v.*
14 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC
15 Wage Order 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are
16 necessary to the performance of a job, such tools and equipment shall be provided and maintained by the
17 employer, except that an employee whose wages are at least two (2) times the minimum wage provided
18 herein may be required to provide and maintain hand tools and equipment customarily required by the
19 trade or craft.”

20 147. First, during the relevant time period, Defendants had a company-wide policy of
21 requiring Plaintiffs and aggrieved employees to utilize their own personal cellular phones and cellular
22 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-
23 related cellular phone expenses. Plaintiffs and aggrieved employees were required to use their personal
24 cellular phones to complete their work-related tasks, such as discussing upcoming work assignments
25 with Defendants’ managers or reviewing healthcare alerts and updates regarding safety warnings and
26 instructions. Plaintiff Espinosa would spend 10-15 minutes per instance speaking with his
27 managers/supervisors on his personal cell phone. Although Defendants required Plaintiffs and aggrieved
28 employees to utilize their personal cellular phones to carry out their work-related responsibilities,

1 Defendants failed to fully reimburse them for this cost.

2 148. Second, during the relevant time period, Defendants, on a company-wide basis, required
3 that Plaintiffs and aggrieved employees use their own personal vehicles to carry out company business,
4 such as driving to other work sites, but failed to reimburse them for all of the costs of their work-related
5 vehicle and travel expenses. For example, Plaintiff Espinosa periodically drove to other Kaiser facilities
6 in Riverside and San Marcos to work a scheduled shift. However, Defendants only reimbursed a portion
7 of his travel expenses, paying a reduced rate of 51 cents per mile instead of at the IRS Standard Mileage
8 Rate¹ of 58 cents (2019), 54.5 cents (2018), 53.5 cents (2017), and so forth, or instead of his actual
9 mileage or travel expenses. Although Defendants required Plaintiffs and aggrieved employees to utilize
10 their own vehicles and incur associated costs, Defendants failed to reimburse them fully for these
11 necessary expenses.

12 149. Third, Defendants also had a company-wide policy of requiring Plaintiffs and aggrieved
13 employees to travel in their own personal vehicles to obtain mandatory physical examinations, TB
14 testing, and/or drug testing, including flu shots, but did not reimburse them for their travel expenses,
15 including mileage. For example, Plaintiff Espinosa followed Defendants' instructions, traveled 5-6 miles
16 roundtrip in his personal vehicle, and underwent Defendants' mandatory flu shots and TB testing, but
17 was not reimbursed for his mileage to and from the medical facilities. Although Defendants required
18 Plaintiffs and aggrieved employees to undergo physical examinations, TB testing, and/or drug testing,
19 Defendants never reimbursed them for all of their travel expenses.

20 150. Fourth, Defendants also had a company-wide policy of requiring Plaintiffs and
21 aggrieved employees to incur the costs of obtaining mandatory flu shots and/or TB tests, but did not fully
22 reimburse them for their resulting co-pays and out of pocket expenses. For example, Plaintiff Espinosa
23 paid approximately \$60.00 out of pocket to obtain a TB test at CVS in San Diego, California. However,
24 Defendants did not fully reimburse Plaintiffs for this work-related expense.

25 151. Defendants could have provided Plaintiffs and aggrieved employees with the actual
26 tools for use on the job, such as company phones and company vehicles to be used for fulfilling work-
27

28 ¹ See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed March 17, 2020).

1 related tasks, or Defendants could have reimbursed employees for the costs of their cellular phone,
2 mileage, travel expenses, and TB testing and/or flu shot expenses. Instead, Defendants passed these
3 operating costs off onto Plaintiffs and aggrieved employees.

4 152. Defendants' company-wide policy and/or practice of passing on their operating costs to
5 Plaintiffs and aggrieved employees violates California Labor Code section 2802. Defendants have
6 intentionally and willfully failed to reimburse Plaintiffs and other aggrieved employees for necessary
7 business-related expenses and costs.

8 153. Plaintiffs and aggrieved employees are entitled to recover from Defendants their
9 business-related expenses incurred during the course and scope of their employment, plus interest.

10 **REQUEST FOR JURY TRIAL**

11 Plaintiffs request a trial by jury.

12 **PRAYER FOR RELIEF**

13 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
14 Defendants, jointly and severally, as follows:

15 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of
16 twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs reserve the right to
17 amend their prayer for relief to seek a different amount.

18 **As to the First Cause of Action**

19 2. That the Court declare, adjudge and decree that Defendants violated the following
20 California Labor Code provisions as to Plaintiffs and/or other aggrieved employees: 510, 511 and 1198
21 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay
22 at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal
23 periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and
24 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202,
25 and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all
26 earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or
27 physical examinations); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to
28 provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to

1 provide written notice of material terms of employment).

2 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558,
3 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202,
4 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
5 2802, and 2810.5;

6 4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and
7 any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201,
8 202, 203, 204, 222.5, 226(a), 226.7, 510, 511, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197,
9 1197.1, 1198, 2802, and 2810.5;

10 5. For pre-judgment and post-judgment interest as provided by law; and

11 6. For such other and further relief as the Court may deem equitable and appropriate.
12

13 Dated: September 22, 2022

Respectfully submitted,

14
15 By: 

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EXHIBIT “1”



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March 17, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Raymond Espinosa v. Alliance Healthcare Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Raymond Espinosa in connection with his claims under the California Labor Code. Mr. Espinosa was an employee of ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY and/or ALLIANCE ONCOLOGY, LLC. For the purpose of this letter, Mr. Espinosa collectively refers to these entities as "ALLIANCE."

The employer may be contacted directly at the address below:

ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612

ALLIANCE ONCOLOGY, LLC
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612

Mr. Espinosa intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Espinosa seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ALLIANCE in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ALLIANCE employed Mr. Espinosa as a non-exempt, hourly paid MRI Technician from approximately 2006 to September 2019. Mr. Espinosa worked for ALLIANCE at various Kaiser Permanente locations, such as San Gabriel, Los Alamitos, and San Diego, California. During his

employment, Mr. Espinosa typically worked nine (9) hours or more per day, five (5) to six (6) days per week, from 8:00 a.m. to 5:00 p.m. Mr. Espinosa's primary job duties included, without limitation, coordinating MRI patient arrivals and departures, evaluating MRI images and ensuring images were of diagnostic quality for interpretation, cleaning the MRI unit in between each patient and at the end of every shift, and coordinating the cleaning and removal of medical waste.

ALLIANCE has committed one or more of the following Labor Code violations against Mr. Espinosa, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

ALLIANCE's Company-Wide and Uniform Payroll and HR Practices

ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE ONCOLOGY, LLC are a Delaware corporation and limited liability company, respectively, and together are a national provider of outsourced radiology, oncology, and interventional medical services catering to hospitals, health systems, and physician practices. ALLIANCE serves over 1,100 hospitals and other healthcare partners in 46 states. Upon information and belief, ALLIANCE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for ALLIANCE in California, including Mr. Espinosa and other aggrieved employees. At all relevant times, ALLIANCE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Espinosa and other aggrieved employees, regardless of their location or position.

Upon information and belief, ALLIANCE maintains a centralized Payroll department at its corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for ALLIANCE in California, including Mr. Espinosa and other aggrieved employees. Further, ALLIANCE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Espinosa and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, ALLIANCE utilized the same methods and formulas when calculating wages due to Mr. Espinosa and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required

¹ These facts, theories, and claims are based on Mr. Espinosa's experience and counsel's review of those records currently available relating to Mr. Espinosa's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Espinosa reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ALLIANCE willfully failed to pay all overtime wages owed to Mr. Espinosa and other aggrieved employees. During the relevant time period, Mr. Espinosa and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ALLIANCE had a company-wide "on-call" policy, whereby it scheduled Mr. Espinosa and other aggrieved employees to work "on-call" shifts. During an "on-call" shift, Mr. Espinosa and other aggrieved employees had to be available and report to work within 30 minutes of receiving a call from ALLIANCE notifying them that they needed to work. When scheduled to be "on-call," Mr. Espinosa and other aggrieved employees were in essence on controlled standby for ALLIANCE because they could not use that time freely for their own purposes and were forced to put their lives on hold. When assigned an "on-call" shift, Mr. Espinosa refrained from making plans because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from ALLIANCE to report to work. For example, Mr. Espinosa refrained from recreational activities and traveling long distances when he was "on-call," because he had to ensure he could get ready and arrive to the hospital within ALLIANCE's requisite 30-minute time frame. ALLIANCE paid Mr. Espinosa and other aggrieved employees a reduced rate of \$5.00 per hour for working an "on-call" shift. However, ALLIANCE failed to fully pay Mr. Espinosa and other aggrieved employees for the time during which they were waiting to receive a call from ALLIANCE and unable to use their time for their own purposes.

Second, during the relevant time period, ALLIANCE had company-wide policies and/or practices of often staffing only one employee per worksite, which resulted in Mr. Espinosa and other aggrieved employees working during unpaid meal periods. Because ALLIANCE understaffed its assignments and utilized a single-staffing model for some of its worksites, there was no one available to relieve Mr. Espinosa and other aggrieved employees for meal periods. ALLIANCE's uniform adoption of a single-staffing model for its business required Mr. Espinosa and other aggrieved employees to remain on-duty, including during meal periods; thus, there was no one available to provide meal period coverage to employees. As a result, Mr. Espinosa and other aggrieved employees were forced to remain on-duty and work during their unpaid meal periods, handling patient examinations and other work-related tasks. At all relevant times, ALLIANCE knew or should have known that its single-staffing model required Mr. Espinosa and other aggrieved employees to perform their assigned duties during unpaid meal periods.

Third, ALLIANCE had, and continues to have, a company-wide policy and/or practice of understaffing its worksites, while assigning heavy workloads, resulting in a failure to provide Mr. Espinosa and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Espinosa and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Espinosa and other aggrieved employees were required to perform their duties, such as attending to patients, cleaning the machines and facilities as needed, and receiving assignments from ALLIANCE's supervisors, during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. Thus, Mr. Espinosa and other aggrieved

employees missed or had meal periods interrupted in order to complete their assigned workloads. ALLIANCE did not pay Mr. Espinosa and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, ALLIANCE, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Espinosa and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Espinosa and other aggrieved employees were required to work through and/or to return early from meal periods, in order to complete their assigned tasks. Further, on information and belief, because ALLIANCE frowned upon employees accruing meal period penalties, ALLIANCE pressured Mr. Espinosa and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that ALLIANCE would otherwise owe. Thus, Mr. Espinosa and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, during the relevant period, ALLIANCE had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, prior to clocking in at the start of his scheduled shift or after clocking out at the end of his shift, Mr. Espinosa would also receive phone calls and notifications on his personal cellular phone from his supervisors regarding upcoming assignments and important industry updates and guidelines. Additionally, ALLIANCE required Mr. Espinosa and other aggrieved employees to complete online training modules from home but did not compensate them for their actual hours spent completing them. Instead, ALLIANCE's management came up with arbitrary time limitations for completing the modules and only paid Mr. Espinosa and other aggrieved employees for the time ALLIANCE believed it should take to complete the requisite training, rather than the actual time Mr. Espinosa and other aggrieved employees spent completing the training. For example, Mr. Espinosa spent approximately 9.5 hours completing ALLIANCE's requisite online training modules, but was not paid for all of his time. Thus, ALLIANCE failed to correctly track this time spent working outside of their scheduled shifts, and Mr. Espinosa and other aggrieved employees received no compensation for this time.

ALLIANCE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Espinosa and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. ALLIANCE also knew, or should have known, that it did not compensate Mr. Espinosa and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Espinosa and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Espinosa and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. ALLIANCE's failure to pay Mr. Espinosa and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, ALLIANCE did not pay Mr. Espinosa and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, ALLIANCE paid Mr. Espinosa and other aggrieved employees shift differential pay, incentive pay,

nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ALLIANCE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, ALLIANCE failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, ALLIANCE paid other aggrieved employees nondiscretionary bonuses or incentive pay for receiving recognition from other employees, achieving perfect attendance, and referring other employees to work for ALLIANCE. On information and belief, some of these nondiscretionary bonuses and/or incentive pay was listed on other aggrieved employees' wage statements as "Rewards & Recog," "Bonus Misc," and "Perf. Att. Awar." During pay periods that other aggrieved employees were paid overtime and double time wages, ALLIANCE failed to incorporate the nondiscretionary bonus and/or incentive pay into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ALLIANCE paid other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ALLIANCE's failure to properly calculate the overtime and double time rates of pay based on all remuneration paid has resulted in an underpayment of overtime and double time wages to other aggrieved employees on a company-wide basis.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, during the relevant time period, ALLIANCE systematically, and on a company-wide basis, required Mr. Espinosa and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Espinosa and other aggrieved employees were subject to ALLIANCE's control during an "on-call" shift, ALLIANCE did not pay Mr. Espinosa and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. And, as stated above, due to ALLIANCE's policy and/or practice of single-staffing and/or understaffing while assigning heavy workloads and failing to adhere to a schedule of meal periods, Mr. Espinosa and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated, Mr. Espinosa and other aggrieved employees were required to work off-the-clock outside of their scheduled shifts to complete assigned job duties and online training modules, time for which they were not fully paid.

Moreover, ALLIANCE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory physical examinations, tuberculin (TB) testing, and/or drug testing, including obtaining flu shots, upon hiring and periodically thereafter. At all times, ALLIANCE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, ALLIANCE gave Mr. Espinosa strict instructions to obtain annual flu shots and TB tests, and Mr. Espinosa underwent the examination and testing for the sole benefit of ALLIANCE. Each time, Mr. Espinosa followed ALLIANCE's instructions and traveled several miles to and from the medical clinics authorized by ALLIANCE, and spent several hours waiting at the medical clinic and undergoing the requisite treatment and/or testing. However, ALLIANCE did not compensate Mr. Espinosa and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory physical examinations, TB testing, and/or drug testing.

Thus, ALLIANCE did not pay minimum wages for all hours worked by Mr. Espinosa and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ALLIANCE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, ALLIANCE regularly failed to pay at least minimum wages to Mr. Espinosa and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

First, during the relevant time period, as stated, ALLIANCE had, and continues to have, company-wide policies and/or practices of often staffing only one employee per location, which resulted in Mr. Espinosa and other aggrieved employees working during unpaid meal periods or taking their meal periods late. Because ALLIANCE utilized a single-staffing model and/or understaffed their worksites, there was no one available to relieve Mr. Espinosa and other aggrieved employees needing meal period coverage. ALLIANCE's uniform adoption of a single-staffing model for its business required Mr. Espinosa and other aggrieved employees to remain on-duty, including during meal periods; thus, there was no one available to provide meal period coverage to employees. As a result, Mr. Espinosa and other aggrieved employees were forced to remain on-duty and work during their unpaid meal periods, handling patient examinations. At all relevant times, ALLIANCE knew or should have known that its single-staffing model required Mr. Espinosa and other aggrieved employees to perform their assigned duties during unpaid meal periods.

Second, as stated, ALLIANCE had, on a company-wide basis, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. Additionally, ALLIANCE, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Espinosa and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Espinosa and other aggrieved employees had their meal periods cut short and/or took them late.

ALLIANCE's practice of single-staffing and understaffing, coupled with ALLIANCE's practice of assigning heavy workloads, and failure to adhere to a schedule of meal periods, prevented Mr. Espinosa and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Espinosa and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Espinosa would start his meal periods late due to the heavy workload and lack of meal period coverage, would have his meal periods interrupted by his supervisors wanting to discuss work-related matters, and would have his meal periods cut short due to inadequate time built in between patients' appointments and inadequate time to prepare for patients requiring additional assistance.

Third, on information and belief, because ALLIANCE frowned upon employees accruing meal period penalties, ALLIANCE's management would adjust Mr. Espinosa's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by ALLIANCE. However, Mr. Espinosa and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Fourth, ALLIANCE did not provide Mr. Espinosa and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Espinosa missed his second meal period when he worked shifts in excess of ten (10) hours in one day.

Mr. Espinosa and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. ALLIANCE did not present Mr. Espinosa and other aggrieved employees with the opportunity to voluntarily choose whether to waive their first or second 30-minute meal period on any given day. Instead, ALLIANCE had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers

at or near their time of hire. For example, Mr. Espinosa signed ALLIANCE's blanket "Meal Break Waiver" and "Meal Break Waiver (shifts of 6 hours or less)" forms near the time he was hired on September 7, 2006.

Because ALLIANCE took the position that non-exempt, hourly paid employees had waived their rights to one for their two meal periods for the entirety of their employment, ALLIANCE did not provide them with all meal periods to which they were entitled.

ALLIANCE's company-wide use of blanket meal period waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and impeded Mr. Espinosa and other aggrieved employees from taking all meal periods to which they were entitled. And, ALLIANCE's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours due to blanket second meal period waivers discouraged Mr. Espinosa and other aggrieved employees from taking second meal periods.

As a result of ALLIANCE's practices and/or policies, Mr. Espinosa and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. ALLIANCE knew or should have known that as a result of its policies, Mr. Espinosa and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ALLIANCE further knew or should have known that it did not pay Mr. Espinosa and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted, because ALLIANCE adjusted employee time records to reflect compliant meal periods, even if none were taken.

ALLIANCE also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Espinosa and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that ALLIANCE did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because ALLIANCE did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, ALLIANCE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Espinosa and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time

per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, ALLIANCE regularly failed to authorize and permit Mr. Espinosa and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ALLIANCE’s company-wide practices, including assigning heavy workloads and single-staffing/understaffing its worksites, prevented Mr. Espinosa and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, ALLIANCE failed to schedule rest periods, which, coupled with ALLIANCE’s failure to provide adequate rest period coverage, further led to Mr. Espinosa and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, ALLIANCE maintained and implemented a company-wide practice and/or policy requiring that Mr. Espinosa and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Espinosa and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, ALLIANCE effectively maintained control over Mr. Espinosa and other aggrieved employees during rest periods, and, as a result of this rest period policy, ALLIANCE did not relinquish control over Mr. Espinosa and other aggrieved employees during rest periods.

As a result of ALLIANCE’s practices and policies, Mr. Espinosa and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Espinosa missed his rest periods or had them cut short or interrupted, due to ALLIANCE’s policy of assigning heavy workloads and failing to provide sufficient coverage. Mr. Espinosa also took his rest periods late due to ALLIANCE’s understaffing and lack of rest period coverage.

ALLIANCE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Espinosa and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ALLIANCE did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because ALLIANCE did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, ALLIANCE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Espinosa and other aggrieved employees are therefore entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ALLIANCE has not provided Mr. Espinosa and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ALLIANCE has knowingly and intentionally provided Mr. Espinosa and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ALLIANCE issued uniform wage statements to Mr. Espinosa and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, ALLIANCE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because ALLIANCE did not record the time Mr. Espinosa and other aggrieved employees spent working off-the-clock, ALLIANCE did not list the correct amount of gross wages and net wages earned by Mr. Espinosa and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, ALLIANCE failed to accurately list the total number of the hours worked by Mr. Espinosa and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because ALLIANCE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, ALLIANCE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). ALLIANCE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, ALLIANCE issued uniform wage statements to Mr. Espinosa and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Espinosa's and other aggrieved employees' wage statements incorrectly list the employer as "Alliance HealthCare Services," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity,

“ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY,” is listed on the California Secretary of State’s website with the same address. *See example paystub below.*

AHCS Banking Information:
Bank of America Merrill Lynch
275 Valencia Avenue
Brea, CA 92823



Alliance HealthCare Services 18201 Von Karman Suite 600 Irvine, CA 92612 (844)722-4739						
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Raymond Espinosa	Alliance HealthCare Services		09/02/2019	09/15/2019	09/13/2019	610096

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ALLIANCE willfully failed to maintain accurate payroll records for Mr. Espinosa and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, ALLIANCE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Espinosa and other aggrieved employees. Also, as stated, ALLIANCE engaged in a company-wide practice and/or policy of falsifying Mr. Espinosa’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Espinosa and other aggrieved employees. Furthermore, in light of ALLIANCE’s failure to provide Mr. Espinosa and other aggrieved employees with second 30-

minute meal periods to which they were entitled, ALLIANCE kept no records of meal start and end times for second meal periods.

Because ALLIANCE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Espinosa and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Espinosa and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

ALLIANCE willfully failed to pay Mr. Espinosa and other aggrieved employees who are no longer employed by ALLIANCE all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time

of discharge, or within seventy-two (72) hours of their leaving ALLIANCE's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, ALLIANCE implemented, on a company-wide basis, an employer-imposed requirement that Mr. Espinosa and other aggrieved employees undergo mandatory physical examinations, TB testing, and/or drug testing, but required them to do so at their own expense. As stated, ALLIANCE had a company-wide policy requiring that Mr. Espinosa and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo physical examinations, TB testing, and/or drug testing. At all times, ALLIANCE was in control of scheduling the date and time for the examinations and/or testing, selecting the provider/facility where the examinations and/or testing were to take place, and determining the scope of the examinations and/or testing.

For example, Mr. Espinosa was instructed by ALLIANCE to travel to ALLIANCE's designated medical facility and obtain annual TB testing and flu shots. Mr. Espinosa followed ALLIANCE's instructions, traveled to the medical facility authorized by ALLIANCE, and underwent the flu shot(s) and TB testing. Mr. Espinosa was required to travel to and from the medical facilities selected by ALLIANCE using his own vehicle. Mr. Espinosa followed ALLIANCE's instructions and drove 5-6 miles roundtrip to and from the medical facilities designated by ALLIANCE, and then spent 1-2 hours waiting at the medical facilities and undergoing the requisite treatment and testing.

However, ALLIANCE did not compensate Mr. Espinosa and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the physical examinations, TB testing, and/or drug testing, including flu shots, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. ALLIANCE's policy and/or practice of not paying for all costs Mr. Espinosa and other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, and/or drug testing violates California Labor Code section 222.5.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, ALLIANCE required Mr. Espinosa and other aggrieved employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. For example, Mr. Espinosa was scheduled for more than seven (7) consecutive days of work from March 11, 2019, to March 21, 2019. Because Mr. Espinosa and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Espinosa and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, ALLIANCE caused Mr. Espinosa and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

ALLIANCE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

First, ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting at home during a scheduled “on-call” shift and awaiting instructions on whether to show up at the hospital, but ultimately were not called. ALLIANCE did not pay Mr. Espinosa and other aggrieved employees for at least half of their scheduled day's work when they were subject to ALLIANCE's on-call policy and were not called or told not to come into the hospital. For example, Mr. Espinosa waited at home during his scheduled “on-call” shift as required by ALLIANCE's on-call policy, but was sometimes not called or told that the hospital did not need him to work. When this occurred, ALLIANCE did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

Second, ALLIANCE had a company-wide practice of sending Mr. Espinosa and other aggrieved employees home early from their shifts, including before they had worked at least half of their

regular shift, but would not pay Mr. Espinosa and other aggrieved employees for half of their scheduled shift. Although Mr. Espinosa and other aggrieved employees would report to work based on the schedule that ALLIANCE provided to them, ALLIANCE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Espinosa and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, ALLIANCE had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but ALLIANCE failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Espinosa and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing upcoming work assignments with managers or reviewing healthcare alerts and updates regarding safety warnings and instructions. Mr. Espinosa would spend 10-15 minutes per instance speaking with his managers/supervisors through his personal cell phone. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, ALLIANCE failed to fully reimburse them for this cost.

Second, during the relevant time period, ALLIANCE, on a company-wide basis, required that Mr. Espinosa and other aggrieved employees use their own personal vehicles to carry out company business, such as driving to other work sites, but failed to reimburse them for all of the costs of the their work-related vehicle and travel expenses. For example, Mr. Espinosa periodically drove to other Kaiser facilities in Riverside and San Marcos to work a scheduled shift. However, ALLIANCE only reimbursed a portion of his travel expenses, paying a reduced rate of 51 cents per mile instead of at the IRS Standard Mileage Rate² of 58 cents (2019), 54.5 cents (2018), 53.5 cents (2017), and so forth, or instead of his actual mileage or travel expenses. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to utilize their own vehicles and incur associated costs, ALLIANCE failed to reimburse them fully for these necessary expenses.

Third, ALLIANCE also had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to travel in their own personal vehicles to medical facilities to obtain mandatory physical

² See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed Mar. 17, 2020).

examinations, TB testing, and/or drug testing, including flu shots, but did not reimburse them for their travel expenses, including mileage. For example, Mr. Espinosa followed ALLIANCE's instructions, traveled 5-6 miles roundtrip in his personal vehicle, and underwent ALLIANCE's mandatory flu shots and TB testing, but was not reimbursed for his mileage to and from the medical facilities. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo physical examinations, TB testing, and/or drug testing, ALLIANCE never reimbursed them for all their travel expenses.

Fourth, ALLIANCE also had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to incur the costs of obtaining mandatory flu shots and/or TB tests, but did not fully reimburse them for their resulting co-pays and out of pocket expenses. For example, Mr. Espinosa paid approximately \$60.00 out of pocket to obtain a TB test at CVS in San Diego, California. However, ALLIANCE did not fully reimburse Mr. Espinosa for this work-related expense.

ALLIANCE could have provided Mr. Espinosa and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, to be used for fulfilling work-related tasks, or ALLIANCE could have reimbursed employees for the costs of their cellular phone, mileage, travel expenses, and TB testing and/or flu shot expenses. Instead, ALLIANCE passed these operating costs off onto Mr. Espinosa and other aggrieved employees.

Thus, ALLIANCE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

ALLIANCE failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). ALLIANCE's failure to provide other aggrieved employees with written notice of basic information regarding their employment with ALLIANCE is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” ALLIANCE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Espinosa’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Espinosa seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Espinosa, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ALLIANCE for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Espinosa seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY (via U.S. Certified Mail); ALLIANCE ONCOLOGY, LLC (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:
ALLIANCE HEALTHCARE SERVICES, INC.
WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE HEALTHCARE
RADIOLOGY
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612



9590 9403 0424 5163 3612 82

2. Article Number (Transfer from service label)

7019 0700 0001 7653 2190

PS Form 3811, April 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

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☐ Yes

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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail® (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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ALLIANCE HEALTHCARE SERVICES, INC.
WHICH WILL DO BUSINESS IN CALIFORNIA
AS ALLIANCE HEALTHCARE RADIOLOGY
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612

7019 0700 0001 7653 2190

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\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

ALLIANCE HEALTHCARE SERVICES, INC.
WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE HEALTHCARE
RADIOLOGY

City, State, ZIP+4®

18201 VON KARMAN AVE., SUITE 600

PS Form 3800, April 2011 PSN 7530-04-000-9047

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Espinoza v. Alliance
Healthcare Service
Inc.

one

AW APC

Park East, Ste 1000
CA 90067

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02 1P
0000666553 MAR 17 2020
MAILED FROM ZIP CODE 90067



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1. Article Addressed to:

ALLIANCE ONCOLOGY, LLC
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612



9590 9403 0424 5163 3612 99

2. Article Number (Transfer from service label)

7019 0700 0001 7653 2169

PS Form 3811, April 2015 PSN 7530-02-000-9053

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- ☐ Agent
☐ Addressee

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C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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☒ Adult Signature Restricted Delivery
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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery over \$500
- ☐ Priority Mail Express®
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☐ Registered Mail Restricted Delivery
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☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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☐ Return Receipt (electronic) \$

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☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage
\$ **1.63**

Total Postage and Fees
\$ **7.93**

Postmark
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*Espinosa v. Alliance
Oncology, LLC*

Sent To **ALLIANCE ONCOLOGY, LLC**

Street and Apt. No., or PO Box No. **18201 VON KARMAN AVE., SUITE 600**

City, State, ZIP+4® **IRVINE CA 92612**

PS Form 3800, April 2015 PSN 7530-02-000-9037 See Reverse for Instructions

7019 0700 0001 7653 2169

one
AW APC
/ Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ALLIANCE HEALTHCARE SERVICES, INC.
 WHICH WILL DO BUSINESS IN
 CALIFORNIA AS ALLIANCE HEALTHCARE
 RADIOLOGY
 18201 VON KARMAN AVE., SUITE 600
 IRVINE CA 92612



9590 9403 0424 5163 3612 82

2. Article Number (Transfer from service label)

7019 0700 0001 7653 2190

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

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SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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ALLIANCE ONCOLOGY, LLC
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612



9590 9403 0424 5163 3612 99

2. Article Number (Transfer from service label)

7019 0700 0001 7653 2169

PS Form 3811, April 2015 PSN 7530-02-000-9053

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☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted
Delivery☐ Return Receipt for
Merchandise☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

Domestic Return Receipt

EXHIBIT “2”

JAMES *JH* HAWKINS
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

December 21, 2020

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

Alliance Healthcare Services d/b/a Alliance Healthcare Radiology
Agent For Service Of Process: CT Corporation System
818 Seventh Street #930
Los Angeles, CA 90017
Receipt No.: 7013 1090 0001 5857 4524

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2699 et seq.

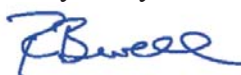
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff, ANTHONY RICE, on behalf of himself and all others similarly situated gives NOTICE to either bring or amend a civil action pursuant to Labor Code Sections 2699, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and ALLIANCE HEALTHCARE SERVICES d/b/a ALLIANCE HEALTHCARE RADIOLOGY. Plaintiff hereby attaches the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code plaintiff alleges have been violated including the facts and theories. All labor provision violations alleged in the complaint PERTAIN TO ALL ENTITIES AND INDIVIDUALS NAMED IN THE COMPLAINT even if not specifically specified.

Please advise by certified mail within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Richard Barnwell

Enclosures: Complaint

James R. Hawkins, Esq. SBN 192925
Isandra Fernandez, Esq. SBN 220482
Richard Barnwell, Esq. SBN 227376
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, **ANTHONY RICE**
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ANTHONY RICE on behalf of himself and all
others similarly situated

Plaintiff,

vs.

ALLIANCE HEALTHCARE SERVICES,
INC., a Delaware Company d/b/a ALLIANCE
HEALTHCARE RADIOLOGY, and DOES 1
through 50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to provide Lawful Meal Periods or Compensation in lieu thereof;**
- 3) Failure to provide Lawful Rest Periods or Compensation in lieu thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and**
- 6) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 382, ANTHONY RICE (hereinafter “Plaintiff”) asserts the following Class Action claim against ALLIANCE HEALTHCARE SERVICES, INC., a Delaware Company doing business in California as ALLIANCE HEALTHCARE RADIOLOGY and DOES 1 through 50 (hereinafter collectively “Defendants”) on behalf of himself and all Non-Exempt Employees employed by Defendants as MRI Technologists.

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations, not paid all lawful wages; not provided compliant rest and meal periods; not provided accurate itemized wage statements; and not paid timely wages at termination.

3. Plaintiff, on behalf of himself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201-203, 226, 226.7, 512, 1194, 1197, Title 8, section 11090 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid wages, unpaid compensation for rest and meal break violations, penalties, attorneys’ fees and costs and other equitable relief.

4. Plaintiff, on behalf of himself and all Non-Exempt Employees, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes here do not give jurisdiction to any

1 other court. The monetary damages and restitution sought by Plaintiff exceed the minimum
2 jurisdiction limits of the California Superior Court and will be established according to proof at
3 trial.

4 6. Venue is proper to each Defendant pursuant to Code of Civil Procedure section
5 395 because they conduct substantial and continuous business activities in Sacramento County
6 and are within the jurisdiction of this Court for service of process purposes. Defendants employ
7 numerous Non-Exempt Employees in Sacramento and other Counties throughout California.

8 **III.**
9 **PARTIES**

10 7. Plaintiff is, and at all times mentioned was, a resident of California.

11 8. Upon information and belief, Defendants are a healthcare service provider
12 headquartered in Irvine, CA. Plaintiff believes Defendants are qualified to do business in
13 California and continue to do so.

14 9. The true names and capacities of Defendants, whether individual, corporate,
15 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
16 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
17 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
18 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
19 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
20 names and capacities of the Defendants designated hereinafter as DOES when such identities
21 become known.

22 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
25 legally attributable to the other Defendants.

26 //

27 //

28 //

IV.

FACTUAL BACKGROUND

11. Plaintiff was employed as an MRI Technologist by Defendants on or about February 26, 2018 until about August 6, 2020. He typically worked 40 hours a week at the Modesto, Roseville, or Elk Grove, CA locations.

12. During the liability period, Plaintiff and Non-Exempt Employees were not paid for all lawful wages earned including minimum wages. For example, due to the demands of the work shift, Plaintiff and Non-Exempt Employees would clock-out for lunch, continue to work, then clock-in at a later time.

13. During the liability period, due to the demands of work shifts and staffing, Plaintiff and Non-Exempt Employees often worked alone and had to work in excess of five (5) hours without being provided an uninterrupted thirty (30) minute meal period by the end of the fifth hour. Further, due to demands of work shift and staffing, Plaintiff and Non-Exempt Employees did not receive a second uninterrupted thirty (30) minute meal period when working over 10-hour shift. Accordingly, Plaintiff and Non-Exempt Employees worked in excess of 5 and 10 hours without receiving compliant meal periods and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that compliant meal periods were not provided.

14. During the liability period, due to the demands of work shifts, Plaintiff and Non-Exempt Employees did not receive a lawful minimum ten (10) minute rest period for every four hours worked or major fraction thereof. Nor were they compensated one (1) hour of pay at their regular rate of compensation for each workday that rest periods were not provided.

15. Defendants failed to pay Plaintiff and Non-Exempt Employees all earned wages in a timely manner; nor have they paid, upon or after termination, all compensation due, including but not limited to all wages owed and compensation for having failed to properly provide rest periods and meal periods.

16. Defendants also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Plaintiff and Non-Exempt Employees with accurate itemized wage statements reflecting total hours worked and appropriate rates of pay.

17. Upon information and belief, during the relevant period, Defendants employed over one hundred (100) employees in California as MRI Technologist.

18. Plaintiff and Non-Exempt Employees at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V. CLASS ACTION ALLEGATIONS

19. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by Defendants in the state of California as non-exempt employees and who occupied positions of MRI technologist and similar position within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” or “Class Members”).

20. Plaintiff also seeks to represent Subclasses comprised of and defined as:

a. All Non-Exempt Employees employed by Defendants in California as MRI Technologist within the liability period who were not accurately paid all lawful wages, including minimum wages, for all hours worked;

b. All Non-Exempt Employees employed by Defendants in California as MRI Technologist within the statutory liability period who were not provided a compliant thirty (30) minute uninterrupted meal period by the end of the fifth hour when they worked over five hours in a shift and who were not provided a second similar uninterrupted meal period by the end of the tenth hour when they worked over ten hours in a shift;

c. All Non-Exempt Employees employed by Defendants in California as MRI Technologist within the liability period who were not provided a minimum ten (10) minute rest period for every four (4) hours, or major fraction thereof, worked per day and not provided compensation in lieu thereof;

d. All Non-Exempt Employees employed by Defendants in California as MRI Technologist within the liability period who were not timely paid all wages owed upon the termination of their employment; and

1 e. All Non-Exempt Employees employed by Defendants in California as
2 MRI Technologist within the liability period who were not provided with accurate and complete
3 itemized wage statements.

4 21. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
5 or modify the class description with greater specificity or further division into subclasses or
6 limitation to particular issues.

7 22. This action has been brought and may properly be maintained as a class action
8 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
9 community of interest in the litigation and the proposed Class is easily ascertainable.

10 **A. Numerosity**

11 23. The potential members of the Class as defined are so numerous that joinder of all
12 the members of the Class is impracticable. While the precise number of Non-Exempt Employees
13 has not been determined at this time, Plaintiff is informed and believes that Defendants currently
14 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt
15 Employees in California who are or have been affected by Defendants' unlawful practices as
16 alleged herein.

17 **B. Commonality**

18 24. There are questions of law and fact common to the Class predominating over
19 any questions affecting only individual Class Members. These common questions of law and
20 fact include, without limitation:

- 21 i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197
22 applicable IWC Wage Orders by failing to pay all earned wages, including minimum
23 wages to for time spent working off the clock;
- 24 ii. Whether Defendants violated sections 226.7, 512 of the Labor Code and
25 applicable IWC Wage Order by failing to provide the statutory thirty (30) minute meal
26 periods to Non-Exempt Employees on days in which they worked in excess of five (5)
27 hours and failing to compensate said employees one-hour wages in lieu of meal periods
28 and failing to provide similar statutory meal period and compensation when they worked

1 in excess of ten (10) hours in a shift;

2 iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC
3 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to
4 Non-Exempt Employees for every four hours or major fraction thereof worked and
5 failing to compensate said employees one (1) hours wages in lieu of rest periods;

6 iv. Whether Defendants violated sections 201-203 of the Labor Code and applicable
7 IWC Wage Orders by failing to pay all earned wages and/or premium wages due and
8 owed at the time that any Non-Exempt Employees' employment with Defendants
9 terminated; and

10 v. Whether Defendants violated section 226 of the Labor Code and applicable IWC
11 Wage Orders by failing to, among other violations, maintain accurate records of, among
12 others, Non-Exempt Employees' earned wages, work periods, meal periods and
13 deductions;

14 **C. Typicality**

15 25. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
16 and all members of the Class sustained injuries and damages arising out of and caused by
17 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
18 alleged herein.

19 **D. Adequacy of Representation**

20 26. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating
22 large employment class actions.

23 **E. Superiority of Class Action**

24 27. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to the Class predominate over any questions affecting only
27 individual members of the Class. Each member of the Class has been damaged and is entitled to
28 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

28. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Owed
(Lab. Code §§ 1194, 1197, IWC Wage Orders)
(Against All Defendants)

29. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

30. Defendants violated California wage and hour law by failing to pay Plaintiff and Class Members for all time spent working under their control.

31. As alleged herein, Defendants failed to pay Plaintiff and Class Members for the time they spent working off the clock during their lunch breaks.

32. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of compensation for all earned wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

33. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Second Cause of Action

Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§512, 226.7, IWC Wage Orders)
(Against All Defendants)

34. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

35. As alleged herein, Defendants' failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days which Plaintiff and Class Members worked in

1 excess of five (5) hours and a second similar meal period for days Plaintiff and Class Members
2 worked in excess of ten (10) hours and failing to provide compensation for such statutorily non-
3 compliance, they violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

4 36. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived
5 of premium wages and are entitled to recovery of such amounts, plus interest and penalties thereon
6 under Labor Code §226.7.

7 37. WHEREFORE, Plaintiff and Class Members request relief as described herein and
8 below.

9 **Third Cause of Action**
10 Failure to Provide Rest Periods
11 Or Compensation in Lieu Thereof
12 (Lab. Code §§226.7, IWC Wage Orders)
13 (Against All Defendants)

14 38. Plaintiff repeats and incorporates herein by reference every allegation set forth
15 above, as though fully set forth herein.

16 39. As alleged herein, Defendants' failure to authorize and permit a minimum ten (10)
17 minute rest period for every four (4) hours or major fraction thereof worked per day by Plaintiff
18 and Class Members, and failing to provide compensation for such non-provided rest periods, they
19 violated Labor Code section 226.7 and IWC applicable Wage Orders.

20 40. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived
21 of premium wages, and are entitled to recovery of such amounts, plus interest and penalties thereon
22 under Labor Code §226.7.

23 41. WHEREFORE, Plaintiff and Class Members request relief as described herein and
24 below.

25 **Fourth Cause of Action**
26 Failure to Timely Pay Wages Due at Termination
27 Lab. Code §§ 201-203, IWC Wage Orders)
28 (Against All Defendants)

42. Plaintiff incorporates by reference and realleges every allegation contained above,
as though fully set forth herein.

1 43. Sections 201 and 202 of the California Labor Code require Defendants to pay its
2 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
3 Code provides that if an employer willfully fails to timely pay such wages the employer must, as
4 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
5 action is commenced. The penalty cannot exceed 30 days of wages.

6 44. Plaintiff and Class Members are entitled to compensation for all forms of wages
7 earned, including compensation for all hours worked and for non-provided rest and meal periods,
8 but to date have not received such compensation therefore entitling them Labor Code section 203
9 penalties.

10 45. More than 30 days have passed since Plaintiff and Class Members have left
11 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
12 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
13 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
14 203 for failure to pay legal wages.

15 46. WHEREFORE, Plaintiff and Class Members request relief as described herein and
16 below.

17
18 **Fifth Cause of Action**
19 Knowing and Intentional Failure to Comply with Itemized Employee
20 Wage Statement Provisions
21 (Lab. Code § 226, IWC Wage Orders)
22 (Against All Defendants)

23 47. Plaintiff repeats and incorporates herein by reference every allegation set forth
24 above, as though fully set forth herein.

25 48. Section 226(a) of the California Labor Code requires Defendants to furnish Plaintiff
26 and Class Members an accurate itemized statement showing, amongst other information, gross
27 wages, net wages and total hours worked. IWC Wage Orders require Defendants to furnish similar
28 itemized statement indicating deductions, reimbursements, and to accurately report total hours
worked by Plaintiff and Class Members.

49. Defendants violated Section 226 by failing to provide Plaintiff and Class Members with wage statements that accurately showed the net wages earned for regular and overtime hours worked. Defendants violated Section 226 by failing to provide Plaintiff and Class Members with wage statements that accurately show the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

50. Defendant's violations prevented Plaintiff and Class Members from the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

51. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

52. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Sixth Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

53. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

54. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

55. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

56. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff and Class Members are entitled to restitution of all wages which have been unlawfully withheld as a result of the business acts and practices described herein.

57. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

VII.

PRAAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 226;
6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194; and
7. For further justifiable relief the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: December 21, 2020

JAMES HAWKINS, APLC

F. B. Jewell

James R. Hawkins, Esq.
Richard Barnwell, Esq.
Attorneys for Plaintiff
ANTHONY RICE

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On **September 22, 2021**, I served the document(s) described as:
**SECOND AMENDED COMPLAINT FOR ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.** on the interested parties in this action by sending [] the original [or] [✓] a true copy
thereof [] to interested parties as follows [or] [✓] as stated on the attached service list:

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[x] **ELECTRONIC FILE & SERVE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to One Legal Court Services website in accordance with the Court’s Order.

[] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

Executed this September 22, 2022 at Los Angeles, California.

Signature