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County of San Diego
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Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAMONA FLORES, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

NORTH COUNTY HEALTH PROJECT
INCORPORATED, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2020-00031419-CU-OE-CTL

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

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(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

[IMAGED FILED]

1 Plaintiff Ramona Flores, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

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

7 **THE PARTIES**

8 4. Plaintiff Ramona Flores is a resident of Oceanside, in San Diego County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Shuttle Driver from
10 approximately March 2004 to March 2005, and from November 2006 to June 2019. Plaintiff
11 worked for Defendants in Oceanside, California. During her employment, Plaintiff typically
12 worked eight (8) hours or more per day, five (5) days per week, from 8:00 a.m. to 5:30 p.m.
13 Plaintiff's primary job duties included, without limitation, transporting patients to and from
14 medical appointments, performing pre-trip inspections of shuttles, and maintaining shuttle
15 cleanliness.

16 5. NORTH COUNTY HEALTH PROJECT INCORPORATED was and is, upon
17 information and belief, a California corporation, and at all times hereinafter mentioned, an
18 employer whose employees are engaged throughout this county, the State of California, or the
19 various states of the United States of America.

20 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
21 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
22 complaint and serve such fictitiously named Defendants once their names and capacities
23 become known.

24 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
25 were the partners, agents, owners, or managers of NORTH COUNTY HEALTH PROJECT
26 INCORPORATED at all relevant times.

27 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, NORTH COUNTY

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

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

11 10. Plaintiff is informed and believes, and thereon alleges, that each of said
12 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
13 omissions, occurrences, and transactions alleged herein.

14 **GENERAL ALLEGATIONS**

15 11. Defendants provide health services to low-income patients in North San Diego
16 and Riverside Counties under the name North County Health Services, operating 12 medical
17 facilities and two mobile clinics. Upon information and belief, Defendants maintain a single,
18 centralized Human Resources (“HR”) department at their company headquarters in San Marcos,
19 California, which is responsible for the recruiting and hiring of new employees, and
20 communicating and implementing Defendants’ company-wide policies, including timekeeping
21 policies and meal and rest period policies, to employees throughout California.

22 12. In particular, Plaintiff and class members, on information and belief, received
23 the same standardized documents and/or written policies. Upon information and belief, the
24 usage of standardized documents and/or written policies, including new-hire documents,
25 indicate that Defendants dictated policies at the corporate level and implemented them
26 company-wide, regardless of their employees’ assigned locations or positions. Upon
27 information and belief, Defendants set forth uniform policies and procedures in several
28 documents provided at an employee’s time of hire.

1 13. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their company headquarters in San Marcos, California, which processes payroll
3 for all non-exempt, hourly paid employees working for Defendants at their various locations
4 and jobsites in California, including Plaintiff and class members. Based upon information and
5 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
6 employees in California, irrespective of their work locations. Upon information and belief,
7 Defendants process payroll for departing employees in the same manner throughout the State
8 of California, regardless of the manner in which each employee's employment ends.

9 14. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
13 advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

15 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
16 members were not paid for all hours worked because all hours worked were not recorded.

17 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive certain wages for
19 overtime compensation and that they were not receiving certain wages for overtime
20 compensation.

21 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
23 pay, and corresponding overtime rate of pay, that included as eligible income all income derived
24 from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

25 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive at least minimum
27 wages for compensation and that they were not receiving at least minimum wages for work that
28 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and

1 class members were not paid at least minimum wages for work done off-the-clock.

2 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to meal periods in accordance
4 with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay
5 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and
6 that Plaintiff and class members were not provided with all meal periods or payment of one (1)
7 additional hour of pay at their regular rates of pay when they did not receive a timely,
8 uninterrupted, thirty (30) minute meal period.

9 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to rest periods in accordance
11 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of
12 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
13 rest period. In violation of the California Labor Code, Plaintiff and class members were not
14 authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff
15 and class members with payment of one (1) additional hour of pay at their regular rates of pay
16 when they were not authorized and permitted to take a compliant rest period.

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

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

26 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of all
28 wages earned upon termination of employment. In violation of the California Labor Code,

1 Plaintiff and class members did not receive payment of all wages due, including, but not limited
2 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
3 time periods.

4 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to timely payment of wages
6 during their employment. In violation of the California Labor Code, Plaintiff and class members
7 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
8 wages, and/or meal and rest period premiums, within permissible time periods.

9 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive their full wages
11 due without having to execute a release of claims.

12 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
14 and class members for all hours worked, and that Defendants had the financial ability to pay
15 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
16 represented to Plaintiff and class members that they were properly denied wages, all in order to
17 increase Defendants' profits.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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1 30. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

4 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
6 requirements have been met:

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violation.

11 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
12 2699.3(a) and any employer response to that notice shall be accompanied
13 by a filing fee of seventy-five dollars (\$75).

14 (c) The LWDA shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
17 the postmark date of the aggrieved employee’s notice. Upon receipt of
18 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
19 (65) calendar days of the postmark date of the aggrieved employee’s
20 notice, the aggrieved employee may commence a civil action pursuant to
21 California Labor Code section 2699 to recover civil penalties.

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

25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

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

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice sent by the aggrieved
7 employee or representative. The employer shall give written notice
8 within that period of time by certified mail to the aggrieved employee or
9 representative and by online filing with the LWDA if the alleged violation
10 is cured, including a description of actions taken, and no civil action
11 pursuant to Section 2699 may commence. If the alleged violation is not
12 cured within the 33-day period, the aggrieved employee may commence
13 a civil action pursuant to Section 2699.

14 33. On March 4, 2020, Plaintiff provided written notice by online filing to the LWDA
15 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
16 alleged to have been violated, including facts and theories to support the alleged violations, in
17 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
18 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
19 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
20 Number LWDA-CM-776453-20. A true and correct copy of Plaintiff's written notice to the
21 LWDA and Defendants is attached hereto as "Exhibit 1."

22 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
24 to investigate Plaintiff's claims and Defendants have not cured the violations.

25 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510,
28 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

36. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

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

1 All persons who worked for Defendants as non-exempt, hourly
2 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

3 43. Plaintiff's proposed subclass consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California and who received at least one wage
6 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

7 44. Members of the Class and Subclass are referred to herein as "class members."

8 45. Plaintiff reserves the right to redefine the Class and Subclass and to add
9 additional subclasses as appropriate based on further investigation, discovery, and specific
10 theories of liability.

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

- 13 (a) Whether Defendants required Plaintiff and class members to work over
14 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
15 hours per week and failed to pay all legally required overtime
16 compensation to Plaintiff and class members;
- 17 (b) Whether Defendants failed to properly calculate the "regular rate" of pay
18 on which Plaintiff's and class members' overtime rate of pay was based;
- 19 (c) Whether Defendants failed to pay Plaintiff and class members at least
20 minimum wages for all hours worked;
- 21 (d) Whether Defendants failed to provide Plaintiff and class members with
22 meal periods;
- 23 (e) Whether Defendants failed to authorize and permit Plaintiff and class
24 members to take rest periods;
- 25 (f) Whether Defendants provided Plaintiff and class members with complete
26 and accurate wage statements as required by California Labor Code
27 section 226(a);

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- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premiums to Plaintiff and class members during their employment;
- (j) Whether Defendants unlawfully required Plaintiff and class members to execute releases of claims as a condition to receiving their earned wages;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

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1 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
2 the interests of each class member with whom she has a well-defined
3 community of interest and typicality of claims, as demonstrated herein.
4 Plaintiff acknowledges that she has an obligation to make known to the
5 Court any relationship, conflicts or differences with any class member.
6 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
7 governing class action discovery, certification, and settlement. Plaintiff
8 has incurred, and throughout the duration of this action, will continue to
9 incur costs and attorneys' fees that have been, are, and will be necessarily
10 expended for the prosecution of this action for the substantial benefit of
11 each class member.

12 (d) Superiority: The nature of this action makes the use of class action
13 adjudication superior to other methods. A class action will achieve
14 economies of time, effort, and expense as compared with separate
15 lawsuits, and will avoid inconsistent outcomes because the same issues
16 can be adjudicated in the same manner and at the same time for the entire
17 class.

18 (e) Public Policy Considerations: Employers in the State of California
19 violate employment and labor laws every day. Current employees are
20 often afraid to assert their rights out of fear of direct or indirect retaliation.
21 Former employees are fearful of bringing actions because they believe
22 their former employers might damage their future endeavors through
23 negative references and/or other means. Class actions provide the class
24 members who are not named in the complaint with a type of anonymity
25 that allows for the vindication of their rights while simultaneously
26 protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

4 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 49. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

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

15 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
17 more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours
18 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

19 52. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
21 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
22 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
23 employee, including nondiscretionary bonuses and incentive pay.

24 53. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
27 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
28 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on

1 the seventh (7th) day of work.

2 54. First, during the relevant period, Defendants have, on a company-wide basis,
3 failed to implement any policies to provide drivers with compliant meal periods and instead,
4 engaged in a practice of discouraging and impeding drivers from taking meal periods by
5 requiring that they complete driving routes picking up and dropping off patients, without
6 building sufficient time into their scheduled route to allow for 30-minute meal periods. Thus,
7 Plaintiff and class members were prevented from taking all timely, uninterrupted 30-minute
8 meal periods, and were also forced to work off-the-clock during their meal periods to complete
9 their assigned routes. Defendants' company-wide policy and/or practice of assigning heavy
10 workloads and allotting too little time for the drivers to actually complete the routes, prevented
11 Plaintiff and class members from being relieved of their duties for meal periods.

12 55. Second, during the relevant period, Defendants had a company-wide policy
13 and/or practice of requiring that Plaintiff and class members carry a company-issued or personal
14 cellular phone in order to respond to calls from supervisors and/or dispatch, at all times upon
15 threat of discipline, even during unpaid meal periods. Defendants' supervisors and dispatchers
16 contacted Plaintiff and class members on these cellular phones regarding dispatches during their
17 meal periods, in order to ask them about the status of certain jobs/assignments. Consequently,
18 Plaintiff and class members suffered missed and interrupted meal periods, work for which they
19 were not paid.

20 56. Third, Defendants, on a company-wide basis, have also systematically
21 discouraged and impeded Plaintiff and class members from taking meal periods by failing to
22 schedule meal periods, even though Defendants are aware that employees are entitled to such
23 meal periods. As a result of this uniform failure to schedule meal periods, Plaintiff and class
24 members were not able to take uninterrupted 30-minute meal periods during their shifts in which
25 they were entitled to receive a meal period. For example, during the relevant time period,
26 Plaintiff frequently worked through her shifts without being relieved of her duties to take a meal
27 period. As a result of this company-wide failure to schedule meal periods, Plaintiff and class
28 members were rarely, if ever, provided uninterrupted 30-minute meal periods during shifts to

1 which they were entitled to receive a meal period.

2 57. Fourth, on information and belief, because Defendants frowned upon employees
3 accruing meal period penalties, Defendants pressured Plaintiff and class members to clock out
4 for meal periods and/or adjusted employee time records to reflect compliant meal periods,
5 regardless of whether they had received a compliant meal period or not, in order to strictly limit
6 meal penalties that Defendants would otherwise owe. Thus, Plaintiff and class members
7 performed work during meal periods for which they were not paid.

8 58. Fifth, Defendants had, and continue to have, a company-wide policy and/or
9 practice of failing to accurately record hours worked by Plaintiff and class members. For
10 example, Defendants utilized a biometric scanner timeclock for employees to clock in and clock
11 out. When Plaintiff and class members would clock in or clock out using the biometric scanner,
12 the scanner would sometimes fail, forcing Ms. Flores and class members to wait several minutes
13 to use a computer workstation or for a supervisor to log their clock-in or clock-out times.
14 Plaintiff and class members were not compensated for the time they remained under the control
15 of Defendants while they sought alternate means to clock in or clock out.

16 59. Defendants knew or should have known that as a result of these company-wide
17 practices and/or policies, Plaintiff and class members were performing assigned duties during
18 their meal periods and performing work off-the-clock before and after their shifts, and were
19 suffered or permitted to perform work for which they were not paid. Because Plaintiff and class
20 members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
21 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
22 class members were not paid overtime wages for all of the overtime hours they actually worked.

23 60. Furthermore, Defendants did not pay Plaintiff and class members the correct
24 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
25 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
26 and/or other forms of remuneration. However, in violation of the California Labor Code,
27 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
28 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for

1 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
2 class members worked overtime and received these other forms of pay, Defendants failed to pay
3 all overtime wages by paying a lower overtime rate than required.

4 61. Defendants' failure to pay Plaintiff and class members the balance of overtime
5 compensation as required by California law, violates the provisions of California Labor Code
6 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
7 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
8 and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

13 62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during
19 which an employee is suffered or permitted to work for the employer, whether or not required
20 to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal.
21 Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

22 64. As stated, during the relevant time period, due to Defendants' company-wide
23 policies and/or practices of assigning heavy workloads while allowing insufficient time to
24 complete driving routes, requiring Plaintiff and class members to respond to calls at all times,
25 and failing to schedule meal periods, Plaintiff and class members were forced to forego meal
26 periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties
27 during meal periods. Also, as stated, in order to prevent employees from accruing meal period
28 penalties, upon information and belief, Defendants' management pressured employees to clock

1 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
2 but required them to continue working, time for which they were not paid. Additionally,
3 Defendants failed to accurately record hours worked by Plaintiff and class members when their
4 biometric scanner timeclock malfunctioned.

5 65. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff and
6 class members worked through that qualified for overtime premium payment. To the extent
7 that these off-the-clock hours did not qualify for overtime premium payment, Defendants did
8 not pay at least minimum wages for those hours worked off-the-clock in violation of California
9 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

10 66. Defendants' failure to pay Plaintiff and class members minimum wages violates
11 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
12 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

14 **THIRD CAUSE OF ACTION**

15 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

16 **Violations**

17 **(Against all Defendants)**

18 67. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

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

27 69. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

2 70. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
3 the applicable IWC Wage Order also require employers to provide a second meal period of not
4 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
5 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
6 hours worked is no more than twelve (12) hours, the second meal period may be waived by
7 mutual consent of the employer and the employee only if the first meal period was not waived.

8 71. As stated, Defendants' company-wide policy and/or practice of assigning heavy
9 workloads and allotting too little time for the drivers to actually complete the routes, while
10 requiring them to respond to calls from supervisors or dispatch on threat of discipline, prevented
11 Plaintiff and other class members from being relieved of their duties for meal periods. In
12 conjunction with assigning heavy workloads, Defendants failed to schedule meal periods, which
13 has exacerbated the lack of meal period coverage. As a result of these practices and/or policies,
14 Plaintiff and class members were forced to work in excess of five (5) hours before taking a meal
15 period and, at times, had their meal periods interrupted and/or had to forgo their meal periods
16 altogether. For example, Plaintiff sometimes worked over five (5) to six (6) hours into her shift
17 before being able to take her meal period. Plaintiff and class members did not sign valid meal
18 period waivers on days that they were entitled to meal periods and were not relieved of all
19 duties.

20 72. Additionally, because Defendants frowned upon employees accruing meal period
21 penalties, upon information and belief, Defendants' management would encourage employees
22 to clock out for meal periods before the end of the fifth hour of work and/or adjust employee
23 time records to reflect compliant meal periods, regardless of whether they had received a
24 compliant meal period, in order to strictly limit meal penalties that would need to be paid by
25 Defendants.

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

1 further knew or should have known that Defendants did not pay Plaintiff and class members
2 meal period premium wages when meal periods were late, interrupted, shortened, or missed.

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

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

18 **FOURTH CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 20 **(Against all Defendants)**

21 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 77. At all relevant times herein set forth, the applicable IWC Wage Order and
24 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
25 members' employment by Defendants.

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

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3½) hours.

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

15 80. During the relevant time period, Defendants regularly failed to authorize and
16 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
17 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
18 scheduling policies and practices, or lack thereof, prevented Plaintiff and class members from
19 being relieved of all duty to take their rest periods. Furthermore, upon information and belief,
20 during the relevant time period, Defendants maintained implemented a company-wide on-
21 premises rest period policy, which mandated that Plaintiff and class members remain on the
22 work premises during their rest periods. Upon information and belief, Defendants’ company-
23 wide on-premises rest period policy prevented Plaintiff and class members from being relieved
24 of all duties for rest periods and caused them to perform work during rest periods.

25 81. As a result of Defendants’ practices and policies, Plaintiff and class members
26 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
27 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
28 during her employment, Plaintiff missed her rest periods or took them late in order to complete

1 her driving routes.

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

11 83. Defendants' conduct violates the applicable IWC Wage Order and California
12 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
13 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
14 compensation for each work day that a compliant rest period was not authorized and permitted.

15 **FIFTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

17 **Statements and Failure to Maintain Accurate Payroll Records**

18 **(Against all Defendants)**

19 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

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

26 86. At all relevant times, Defendants have knowingly and intentionally provided
27 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
28 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that

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

5 87. Because Defendants did not record the time Plaintiff and Subclass members spent
6 working off the clock and deducted time from Plaintiff's and Subclass members' records for
7 meal periods that were interrupted and/or missed (and therefore time for which they should have
8 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
9 Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the
10 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
11 and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
12 rates of pay in effect during the pay period and corresponding accurate number of work hours
13 worked at each hourly rate in violation of section 226(a)(9).

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

22 89. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
24 forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment
25 of any employees for longer hours than those fixed by the order or under conditions of labor
26 prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers
27 are required to keep accurate time records showing when the employee begins and ends each
28 work period and meal period. During the relevant time period, Defendants failed, on a

1 company-wide basis, to keep accurate records of work period and meal period start and stop
2 times for Plaintiff and Subclass members, in violation of section 1198. As stated, Defendants
3 engaged in a company-wide practice and/or policy of falsifying Plaintiff's and Subclass
4 members' time records by recording that compliant meal periods were taken regardless of if or
5 when meal periods were actually taken, and thereby failed to keep accurate records of meal start
6 and end times for Plaintiff and Subclass members.

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

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

21 **SIXTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

23 **Upon Termination**

24 **(Against all Defendants)**

25 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 93. This cause of action is dependent upon, and wholly derivative of, the overtime
28 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid

1 to Plaintiff and those class members no longer employed by Defendants upon their termination.

2 94. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
3 that if an employer discharges an employee, the wages earned and unpaid at the time of
4 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
5 her employment, his or her wages shall become due and payable not later than seventy-two (72)
6 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
7 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
8 quitting.

9 95. Defendants willfully failed to pay Plaintiff and class members who are no longer
10 employed by Defendants the earned and unpaid wages set forth above, including but not limited
11 to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the
12 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

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

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
21 **Employment**
22 **(Against all Defendants)**

23 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 98. This cause of action is dependent upon, and wholly derivative of, the overtime
26 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
27 to Plaintiff and class members during their employment.

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

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

10 101. At all times relevant herein, Labor Code section 204 provides that all wages
11 earned for labor in excess of the normal work period shall be paid no later than the payday for
12 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
13 204 provides that the requirements of this section are deemed satisfied by the payment of wages
14 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
15 calendar days following the close of the payroll period.

16 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and
17 class members all wages due including, but not limited to, overtime wages, minimum wages,
18 and/or meal and rest period premium wages, within the time periods specified by California
19 Labor Code section 204.

20 103. Defendants' failure to pay Plaintiff and class members all wages due violates
21 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
22 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

23 **EIGHTH CAUSE OF ACTION**

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

25 **(Against all Defendants)**

26 104. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

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105. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

106. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (d) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and other aggrieved employees, as alleged herein;
- (e) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (f) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants’ failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (g) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants’ failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (h) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (i) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;

- (j) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;
- (k) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (l) Violation of Labor Code section 206.5 for requiring Plaintiff and other aggrieved employees to execute a release of claims as a condition to receiving wages due to them, as set forth below.

107. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.”

108. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, Defendants required Plaintiff and other aggrieved employees to sign verifications on their daily timesheets that stated that they were provided meal periods before the start of the fifth hour, regardless if they were provided with a compliant meal period. Defendants compelled Plaintiff and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including meal and rest period premium wages. Defendants’ policy and practice of requiring Plaintiff and other aggrieved employees to release their claims for wages due as a condition to receiving their wages is in violation of California Labor Code section 206.5.

109. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

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1 **NINTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 111. Defendants are “persons” as defined by California Business & Professions Code
8 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 112. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.
13 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
14 Code of Civil Procedure section 1021.5.

15 113. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business & Professions
17 Code sections 17200, *et seq.*

18 114. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Order, and paying Plaintiff and class
25 members overtime at a lower rate than required by law by failing to
26 properly calculate the regular rate of pay for purposes of overtime, as
27 alleged herein;

28 ///

- 1 (b) Failing to pay at least minimum wage to Plaintiff and class members in
2 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
3 and 1198 and the applicable IWC Order, as alleged herein;
- 4 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
5 members in violation of California Labor Code sections 226.7, 512(a),
6 516, 1198, and the applicable IWC Order, as alleged herein;
- 7 (d) Failing to authorize and permit Plaintiff and class members to take
8 uninterrupted rest periods in violation of California Labor Code sections
9 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 10 (e) Failing to provide Plaintiff and class members with accurate wage
11 statements and failing to maintain accurate payroll records in violation of
12 California Labor Code sections 226(a), 1174(d), 1198, and the applicable
13 IWC Order, as alleged herein;
- 14 (f) Failing timely to pay all earned wages to Plaintiff and class members in
15 violation of California Labor Code section 204 and the applicable IWC
16 Order, as alleged herein; and
- 17 (g) Requiring Plaintiff and class members to execute releases of claims as a
18 condition to receiving their earned wages, in violation of California Labor
19 Code section 206.5, as set forth below.

20 115. At all relevant times herein set forth, California Labor Code section 206.5
21 prohibits employers from requiring employees to execute releases of a claim or right “on
22 account of wages due, or to become due, or made as an advance on wages to be earned, unless
23 payment of those wages has been made. A release required or executed in violation of the
24 provisions of this section shall be null and void as between the employer and the employee.”

25 116. During the relevant time period, Defendants required Plaintiff and class members
26 to release their claims for unpaid wages as a condition to receiving their paychecks. For
27 example, on information and belief, Defendants required Plaintiff and class members to sign
28 verifications on their daily timesheets that stated that they were provided meal periods before

1 the start of the fifth hour, regardless if they were provided with a compliant meal period.
2 Defendants compelled Plaintiff and class members to sign this false verification when they, in
3 fact, had not received all earned and unpaid wages, including meal and rest period premium
4 wages. Defendants' policy and practice of requiring Plaintiff and class members to release their
5 claims for unpaid wages as a condition to receiving their paychecks is in violation of California
6 Labor Code section 206.5.

7 117. As a result of the violations of California law herein described, Defendants
8 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
9 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

10 118. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
11 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
12 Defendants during a period that commences four years prior to the filing of this complaint; a
13 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
14 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
15 section 1021.5 and other applicable laws; and an award of costs.

16 **TENTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

18 **Unfair Business Practices**

19 **(Against all Defendants)**

20 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 120. Defendants are "persons" as defined by California Business & Professions Code
23 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
24 associations.

25 121. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
26 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
27 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
28 enforce important rights affecting the public interest within the meaning of Code of Civil

1 Procedure section 1021.5.

2 122. Defendants' activities, namely Defendants' company-wide practice and/or policy
3 of not paying Plaintiff and class members all meal and rest period premium wages due to them
4 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
5 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
6 provided by section 226.7 is a "dual-purpose" remedy intended primarily to compensate
7 employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
8 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
9 Plaintiff and class members as part of their employment with Defendants, and thus Defendants'
10 practice and/or policy of denying these statutory benefits constitutes an unfair business practice
11 in violation of California Business & Professions Code sections 17200, *et seq.* (Id.)

12 123. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
14 practices have violated the spirit of California's meal and rest period laws and constitute acts
15 against the public policy behind these laws.

16 124. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
17 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
18 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
19 commences four years prior to the filing of this complaint; a permanent injunction requiring
20 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
21 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5 and other applicable laws; and an award of costs.

23 **REQUEST FOR JURY TRIAL**

24 Plaintiff requests a trial by jury.

25 **PRAYER FOR RELIEF**

26 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
27 Defendants, jointly and severally, as follows:

28 ///

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

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

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1 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a);

3 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

4 15. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Third Cause of Action**

7 16. That the Court declare, adjudge, and decree that Defendants violated California
8 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
9 willfully failing to provide all meal periods to Plaintiff and class members;

10 17. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a meal period was not
12 provided;

13 18. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 19. For premiums pursuant to California Labor Code section 226.7(b);

16 20. For pre-judgment interest on any unpaid meal period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 21. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 22. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fourth Cause of Action**

23 23. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing
25 to authorize and permit Plaintiff and class members to take all rest periods;

26 24. That the Court make an award to the Plaintiff and class members of one (1) hour
27 of pay at each employee's regular rate of pay for each workday that a rest period was not
28 authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

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37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); and 206.5 (by requiring employees to release claims as a condition to receive paychecks);

49. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

50. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

52. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

53. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage

1 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
2 timely to pay Plaintiff and class members all earned wages during employment, and requiring
3 employees to release claims as a condition to receive paychecks, constitutes an unlawful
4 business practice in violation of California Business and Professions Code sections 17200, *et*
5 *seq.*;

6 54. For restitution of unpaid wages to Plaintiff and all class members and
7 prejudgment interest from the day such amounts were due and payable;

8 55. For the appointment of a receiver to receive, manage and distribute any and all
9 funds disgorged from Defendants and determined to have been wrongfully acquired by
10 Defendants as a result of violations of California Business & Professions Code sections 17200
11 *et seq.*;

12 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
13 California Code of Civil Procedure section 1021.5; and

14 57. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Tenth Cause of Action**

17 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
18 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
19 unfair business practice in violation of California Business and Professions Code sections
20 17200, *et seq.*;

21 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
22 from Plaintiff and class members and prejudgment interest from the day such amounts were due
23 and payable;

24 60. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections 17200
27 *et seq.*;

28 ///

1 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 62. For pre-judgment and post-judgment interest as provided by law; and

4 63. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: October 8, 2020

Respectfully submitted,

8 Capstone Law APC

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10 By: 
11 Bevin Allen Pike
12 Orlando Villalba
13 Trisha Monesi

14 Attorneys for Plaintiff Ramona Flores
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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 4, 2020

VIA ONLINE SUBMISSION

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

Subject: *Ramona Flores v. North County Health Project Incorporated*

Dear PAGA Administrator:

This office represents Ramona Flores in connection with her claims under the California Labor Code. Ms. Flores was an employee of NORTH COUNTY HEALTH PROJECT INCORPORATED, which does business as North County Health Services ("NCHS").

The employer may be contacted directly at the address below:

NORTH COUNTY HEALTH PROJECT INCORPORATED
150 VALPREDA ROAD
SAN MARCOS CA 92069

Ms. Flores 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"). Ms. Flores seeks relief on behalf of herself, the State of California, and other persons who are or were employed by NCHS as a non-exempt, hourly paid employee in California 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.

NCHS employed Ms. Flores as an hourly paid, non-exempt employee from approximately March 2004 to March 2005, and from November 2006 to June 2019. Ms. Flores worked for NCHS as a Shuttle Driver in San Marcos and Oceanside, California. During her employment, Ms. Flores typically worked eight (8) hours or more per day, five (5) days per week, from 8:00 a.m. to 5:30 p.m. Ms. Flores was compensated approximately \$16.33 per hour. Her job duties included, without limitation, transporting patients to and from medical appointments, performing pre-trip inspections of shuttles, and maintaining shuttle cleanliness.

NCHS committed one or more of the following Labor Code violations against Ms. Flores, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

NCHS’s Company-Wide and Uniform Payroll and HR Practices

NORTH COUNTY HEALTH PROJECT INCORPORATED is a California corporation that provides health services to low-income patients in North San Diego and Riverside Counties, operating 12 medical facilities and two mobile clinics. Upon information and belief, NCHS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Marcos, California, for all non-exempt, hourly paid employees working for NCHS in California, including Ms. Flores and other aggrieved employees. At all relevant times, NCHS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Flores and other aggrieved employees, regardless of its location or position.

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

NCHS willfully failed to pay all overtime wages owed to Ms. Flores and other aggrieved employees. During the relevant time period, Ms. Flores 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

¹ These facts, theories, and claims are based on Ms. Flores’s experience and counsel’s review of those records currently available relating to Ms. Flores’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, Ms. Flores reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

(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, NCHS has, on a company-wide basis, failed to implement any policies to provide drivers with compliant meal periods and instead, engaged in a practice of discouraging and impeding drivers from taking meal periods by requiring that they complete driving routes picking up and dropping off patients, without building sufficient time into their scheduled route to allow for 30-minute meal periods. Thus, Ms. Flores and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods, and were also forced to work off-the-clock during their meal periods to complete their assigned routes. NCHS's company-wide policy and/or practice of assigning heavy workloads and allotting too little time for the drivers to actually complete the routes, prevented Ms. Flores and other aggrieved employees from being relieved of their duties for meal periods.

Second, during the relevant period, NCHS had a company-wide policy and/or practice of requiring that Ms. Flores and other aggrieved employees carry a company-issued or personal cellular phone in order to respond to calls from supervisors and/or dispatch, at all times, upon threat of discipline, even during unpaid meal periods. NCHS's supervisors and dispatchers contacted Ms. Flores and other aggrieved employees on these cellular phones regarding dispatches during their meal periods, in order to ask them about the status of certain jobs/assignments. Consequently, Ms. Flores and other aggrieved employees suffered missed and interrupted meal periods, work for which they were not paid.

Third, NCHS, on a company-wide basis, has also systematically discouraged and impeded Ms. Flores and other aggrieved employees from taking meal periods by failing to schedule meal periods, even though NCHS is aware that employees are entitled to such meal periods. As a result of this uniform failure to schedule meal periods, Ms. Flores and other aggrieved employees were not able to take uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period. For example, during the relevant time period, Ms. Flores frequently worked through her shifts without being relieved of her duties to take a meal period. As a result of this company-wide failure to schedule meal periods, Ms. Flores and other aggrieved employees were rarely, if ever, provided uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a meal period.

Fourth, on information and belief, because NCHS frowned upon employees accruing meal period penalties, NCHS pressured Ms. Flores 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 NCHS would otherwise owe. Thus, Ms. Flores and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, NCHS had, and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by Ms. Flores and other aggrieved employees. For example, NCHS utilized a biometric scanner timeclock for employees to clock in and clock out. When Ms. Flores and other aggrieved employees would clock in or clock out using the biometric scanner, the scanner would sometimes fail, forcing Ms. Flores and other aggrieved employees to wait several minutes to use a computer workstation or for a supervisor to log their clock-in or clock-out times. Ms. Flores and other aggrieved employees were not compensated for the time they remained under the control of NCHS while they sought alternate means to clock in or clock out.

NCHS knew or should have known that as a result of these company-wide practices and/or policies, Ms. Flores and other aggrieved employees were working during their meal periods and/or before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Ms. Flores and other aggrieved employees 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, Ms. Flores and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, NCHS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, NCHS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, NCHS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, 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, NCHS failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Flores 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 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 stated, during the relevant time period, due to NCHS's company-wide policies and/or practices of assigning heavy workloads while allowing insufficient time to complete driving routes, requiring Ms. Flores and other aggrieved employees to respond to calls at all times, and failing to schedule meal periods, Ms. Flores 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. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, NCHS's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Additionally, NCHS failed to accurately record hours worked by Ms. Flores and other aggrieved employees when its biometric scanner timeclock malfunctioned.

Additionally, during the relevant time period, on information and belief, NCHS also maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests, physical examinations, and/or tuberculin (TB) tests. At all times, upon information and belief, NCHS was in control of scheduling the date and time for the testing and/or physical examination, selecting the provider/facility where the testing and/or physical examination was to take place, and determining the scope of the testing and/or physical examination. However, NCHS did not compensate other

aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, NCHS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, NCHS 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, and 1197.1. Accordingly, NCHS regularly failed to pay at least minimum wages to Ms. Flores 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.

Ms. Flores 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, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period 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 break 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.

As stated, NCHS's company-wide policy and/or practice of assigning heavy workloads and allotting too little time for the drivers to actually complete the routes, while requiring them to respond to calls from supervisors or dispatch on threat of discipline, prevented Ms. Flores and other aggrieved employees from being relieved of their duties for meal periods. In conjunction with assigning heavy workloads, NCHS failed to schedule meal periods, which has exacerbated the lack of meal period coverage. As a result of these practices and/or policies, Ms. Flores 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. For example, Ms. Flores sometimes worked over five (5) to six (6) hours into her shift before being able to take her meal period.

Additionally, because NCHS frowned upon employees accruing meal period penalties, upon information and belief, NCHS's management would encourage employees to clock out for meal periods before the end of the fifth hour of work and/or adjust employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by NCHS.

Moreover, NCHS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Ms. Flores 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.

NCHS knew or should have known that as a result of its company-wide policies and/or practices, that Ms. Flores and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. NCHS further knew or should have known that it did not pay Ms. Flores and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, NCHS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Flores and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that NCHS did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because NCHS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such 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, NCHS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Flores and other aggrieved employees are 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, NCHS regularly failed to authorize and permit Ms. Flores 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, NCHS's company-wide scheduling policies and practices, or lack thereof, prevented Ms. Flores and other aggrieved employees from being relieved of all duty to take their rest periods. Furthermore, upon information and belief, during the relevant time period, NCHS maintained implemented a company-wide on-premises rest period policy, which

mandated that Ms. Flores and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, NCHS' company-wide on-premises rest period policy prevented Ms. Flores and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of NCHS's practices and policies, Ms. Flores 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, during her employment, Ms. Flores missed her rest periods or took them late in order to complete her driving routes.

NCHS 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, Ms. Flores and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that NCHS did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because NCHS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as 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, NCHS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Flores and other aggrieved employees are 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. NCHS has not provided Ms. Flores 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, NCHS has knowingly and intentionally provided Ms. Flores and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, NCHS issued uniform wage statements to Ms. Flores and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, NCHS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because NCHS did not record the time Ms. Flores and other aggrieved employees spent working off-the-clock and deducted time from Ms. Flores's and other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), NCHS did not list the correct amount of gross wages and net wages earned by Ms. Flores and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, NCHS failed to accurately list the total number of hours worked by Ms. Flores 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 NCHS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, NCHS 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). NCHS 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).

The wage statement deficiencies also include, among other things, 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 the hours they 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), NCHS willfully failed to maintain accurate payroll records for Ms. Flores 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. During the relevant time period, NCHS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Flores and other aggrieved employees, in violation of section 1198. As stated, NCHS engaged in a company-wide practice and/or policy of falsifying Ms. Flores's and other aggrieved employees' time records by deducting meal periods or 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 Ms. Flores and

other aggrieved employees. Furthermore, in light of NCHS's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, NCHS kept no records of meal start and end times for second meal periods.

Because NCHS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Flores 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, Ms. Flores 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.

Ms. Flores 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, NCHS failed to pay Ms. Flores and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Flores 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.

NCHS willfully failed to pay Ms. Flores and other aggrieved employees who are no longer employed by NCHS all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72)

hours of their leaving NCHS's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Flores 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, NCHS required Ms. Flores and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, NCHS required Ms. Flores and other aggrieved employees to sign verifications on their daily timesheets that stated that they were provided meal periods before the start of the fifth hour, regardless if they were provided with a compliant meal period. NCHS compelled Ms. Flores and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including meal and rest period premium wages. NCHS's policy and practice of requiring Ms. Flores and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Ms. Flores and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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, NCHS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests, physical examinations, and/or TB tests but required them to do so at their own expense. As stated, NCHS had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing, physical examinations, and/or TB testing. At all times, NCHS was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

However, NCHS did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests, physical examinations, and/or TB tests, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. NCHS's policy and/or practice of not paying for all costs

and other aggrieved employees incurred obtaining mandatory drug tests, physical examinations, and/or TB tests violates California Labor Code section 222.5.

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).

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, IWC Wage Order 5-2001, 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, as stated, NCHS had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing, physical examinations, and/or TB testing, but did not reimburse them for their travel expenses. Although NCHS required other aggrieved employees to undergo drug testing, physical examinations, and/or TB testing, NCHS failed to reimburse them for these expenses.

Second, during the relevant time period, NCHS had a company-wide policy of requiring other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but NCHS failed to fully reimburse them for the costs of their work-related cellular phone expenses. Other aggrieved employees were directed to use their personal cellular phones to complete their work-related tasks, such as communicating with NCHS's managers and dispatch, and to assist them with their driving routes. Although NCHS required other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, NCHS failed to fully reimburse them for this cost.

NCHS could have provided other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or, NCHS could have reimbursed employees for their travel, mileage, and cellular phone expenses. Instead, NCHS passed these operating costs off onto other aggrieved employees. At all relevant times, other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, NCHS 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. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.

NCHS 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).

NCHS's failure to provide other aggrieved employees with written notice of basic information regarding their employment with NCHS 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." NCHS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Flores's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Flores seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Flores, 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 NCHS for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Flores seeks all applicable civil 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:

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

Best Regards,



Anthony Castillo

Copy: NORTH COUNTY HEALTH PROJECT INCORPORATED (via U.S. Certified Mail)

one
AW APC
Park East, Ste 1000
CA 90067

CERTIFIED MAIL



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SAN MARCOS CA 92069



9590 9402 4882 9032 7436 11

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1. Article Addressed to:

**NORTH COUNTY HEALTH PROJECT
INCORPORATED
150 VALPREDA ROAD
SAN MARCOS CA 92069**



9590 9402 4882 9032 7436 11

2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **October 8, 2020**, I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & 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 ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Alexis S. Gutierrez, (Bar No. 190487)

agutierrez@higgslaw.com

Jamie M. Ritterbeck, Bar No. 286151)

ritterbeckj@higgslaw.com

HIGGS FLETCHER & MACK LLP

401 West "A" Street, Suite 2600

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Fax: (619) 696-1410

Attorneys for Defendant

NORTH COUNTY HEALTH PROJECT,

INC. dba NORTH COUNTY HEALTH

SERVICES

☐ **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.

☐ **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 FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via [One Legal eService](#) to the individuals listed above as they exist on that database. This will constitute service of the documents(s)

☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

☐ **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 on **October 8, 2020**, at Los Angeles, California.

Xochitl Tapia

Type or Print Name


Signature