

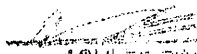
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

AUG 13 2020

BY 
ASHLEE BAYLESS, DEPUTY

Attorneys for Plaintiff NATALIE PALMER individually, on a representative basis, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY SAN BERNARDINO

NATALIE PALMER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CHARTER HOSPICE, INC., a California
Corporation; CHARTER HOSPICE OF
COLTON, LLC, a California Limited
Liability Company; ARCH B. GILBERT, an
individual; FRED FRANK, an individual; and
DOES 1 through 10, inclusive;

Defendants.

Case No.: CIVDS2013037
[Assigned for all purposes to Judge David
Cohn, Dept. S-26]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Regular and Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition

PAGA CLAIMS

- (9) PAGA Assessment for Failure to Pay Minimum Wages;
- (10) PAGA Assessment for Failure to Pay Overtime Wages;
- (11) PAGA Assessment for Failure to Provide Meal Periods;
- (12) PAGA Assessment for Failure to Provide Rest Periods;
- (13) PAGA Assessment for Failure to Reimburse Business Expenses;

- (14) PAGA Assessment for Failure to Timely Pay Wages;
- (15) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements

Complaint Filed: June 25, 2020

Plaintiff NATALIE PALMER (“Plaintiff”), on behalf of herself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff was employed by Defendants CHARTER HOSPICE, INC. (“Defendant CHI”), CHARTER HOSPICE OF COLTON, LLC (“Defendant CHC”), ARCH B. GILBERT (“Defendant Gilbert”), FRED FRANK (“Defendant Frank”), and DOES 1 through 10, inclusive, (collectively, the “Defendants”) from approximately March 2017 to about present as a nurse who provided in-home hospice care on behalf of Defendants’ customers. However, during the entirety of her employment with Defendants, she was subjected to numerous labor violations.

2. Plaintiff brings this action against Defendants on behalf of herself and all other similarly situated persons who performed in-home hospice and/or nursing care as non-exempt employees of Defendants in the State of California within the four years preceding the filing of this Complaint (the “Represented Employees”), against Defendants for California Labor Code violations stemming from Defendants’ failure to pay minimum and regular wages, failure to pay overtime wages, failure to provide compliant meal periods and paid rest breaks, failure to reimburse business expenses, failure to timely pay wages, and failure to provide accurate itemized wage statements.

3. Plaintiff alleges on information and belief that the Represented Employees were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Plaintiff was subjected during their employment.

4. At all relevant times, Plaintiff and the Represented Employees performed specific duties for Defendants as nurses. Specifically, Plaintiff and the Represented Employees provided in-home nursing and hospice care to Defendants’ clients. Defendants have maintained policies and practices that violate the California Labor Code and IWC Wage Orders discussed below.

1 5. Plaintiff and the Represented Employees were not paid at least the minimum
2 wage for each hour they worked for Defendants, nor were they paid overtime wages for each
3 overtime hour they worked. Instead, each day Plaintiff and the Represent Employees were
4 assigned multiple clients over large geographic territories requiring them to maintain such a tight
5 schedule that they were often not able to complete all of their work, including extensive charting,
6 during the first eight hours of their shifts. Defendants strongly discouraged its employees from
7 working overtime. The anti-overtime policies in conjunction with the overwhelming amount of
8 daily work assigned to Plaintiff and the Represented Employees, regularly forced the employees
9 to perform off-the-clock work during overtime hours to complete their assigned duties each day.
10 Despite knowing that their employees were working off-the-clock, the Defendants failed to
11 compensate employees for substantial amounts of overtime hours worked. Furthermore, during
12 certain periods before the company was bought out, any overtime hours that were logged were
13 paid at the straight time rate rather than at time and one-half regular rate.

14 6. Plaintiff and the Represented Employees were not provided off-duty meal and rest
15 periods to which they were entitled due to the hectic schedule.

16 7. Plaintiff and the Represented Employees were also required to incur substantial
17 expenses in direct consequence of the discharge of their duties for Defendants without
18 reimbursement. For example, Plaintiff and the Represented Employees incurred expenses in
19 relation to the use of their personal vehicles, computers, internet service, and cell phones to carry
20 out their duties for Defendants.

21 8. Plaintiff and the Represented Employees were not paid all earned and unpaid
22 wages Employees upon termination of their employment within the time required by Labor Code
23 §§ 201 – 202 as a result of Defendants’ failure to pay Plaintiff and Represented Employees at
24 least the minimum wage for each hour worked, overtime wages for overtime hours worked, and
25 premium pay for the failure to provide off-duty meal and rest periods.

26 9. Plaintiff and the Represented Employees also did not receive accurate itemized
27 wage statements as required by Labor Code § 226. The wage statements that Defendants
28 provided to Plaintiff and the Represented Employees failed to accurately state all items required

1 by Labor Code § 226(a).

2 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
3 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
4 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
5 competitors.

6 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
7 monetary relief against Defendants and each of them, on behalf of herself and the Represented
8 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
9 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204,
10 218.6, 221, 223, 226, 226.7, 510, 512, 558, 1194, 1194.2, and 2802, among possibly other
11 sections inadvertently omitted. Plaintiff also reserves the right to name additional
12 representatives throughout the State of California.

13 12. Pursuant to § 2699.3(a), on June 5, 2020, Plaintiff gave written notice by online
14 filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
15 Defendants, of the specific provisions of the Labor Code alleged to have been violated, including
16 the facts and theories to support the alleged violations. The waiting period imposed by Labor
17 Code § 2699.3(a)(2)(A) has not yet elapsed. In accordance with Labor Code § 2699(g)(1),
18 Plaintiff reserves the right to amend this complaint or bring a separate complaint within 65 days
19 of: 1) receipt of notice from the LWDA that it does not intend to investigate the alleged
20 violation, or 2) if no notice is provided by the LWDA. Pursuant to Labor Code §
21 2699.3(a)(2)(C), "[n]otwithstanding any other provision of law, a plaintiff may as a matter of
22 right amend an existing complaint to add a cause of action arising under this part at any time
23 within 60 days of the time periods specified in this part."

24 **II. JURISDICTION**

25 13. This Court has jurisdiction over the claims for relief of Plaintiff and the
26 Represented Employees pursuant to the Labor Code and the IWC Wage Orders, among other
27 sections.
28

1 **III. VENUE**

2 14. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
3 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
4 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
5 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
6 Employees in San Bernardino County.

7 **IV. PARTIES**

8 **Plaintiff**

9 15. Plaintiff and Class Representative Natalie Palmer was employed by Defendants
10 from on or about March 2017 through June 4, 2020, and performed work for Defendants in San
11 Bernardino, California.

12 **Defendants**

13 16. Plaintiff is informed and believes and thereon alleges that Defendant All Care
14 Home Health Provider is a California Corporation authorized to and doing business in Los
15 Angeles County, California, and is and/or was the legal employer of Plaintiff and the
16 Represented Employees during the applicable statutory periods.

17 17. Plaintiff is informed and believes and thereon alleges that Defendant Charter
18 Hospice, Inc. is a California Corporation authorized to and doing business in San Bernardino
19 County, California, and is and/or was the legal employer of Plaintiff and the Represented
20 Employees during the applicable statutory periods.

21 18. Plaintiff is informed and believes and thereon alleges that Defendant Charter
22 Hospice of Colton, LLC is authorized to and doing business in San Bernardino County,
23 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
24 during the applicable statutory periods.

25 19. Plaintiff is informed and believes and thereon alleges that Defendant Arch B.
26 Gilbert is an individual authorized to and doing business in San Bernardino County, California,
27 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
28 applicable statutory periods.

1 20. Plaintiff is informed and believes and thereon alleges that Defendant Fred Frank
2 is an individual authorized to and doing business in San Bernardino County, California, and is
3 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
4 statutory periods.

5 21. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
6 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,
7 inclusive, but on information and belief alleges that those Defendants are legally responsible for
8 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
9 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
10 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
11 Defendants when ascertained.

12 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
13 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
14 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
15 each Defendant are legally attributable to the other Defendants. On information and belief, a
16 unity of interest and ownership between each Defendant exists such that all Defendants acted as
17 a single employer of Plaintiff and other similarly situated employees.

18 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
19 each of them, are now, and at all material times herein mentioned were, the agents, servants,
20 employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants,
21 and were, at all times herein mentioned, acting within the course, scope, and purpose of such
22 relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-
23 Defendants.

24 24. Plaintiff is informed and believes, and based thereon alleges, that in conducting
25 themselves in the manner described herein Defendants, and DOES 1 through 10, inclusive, were
26 acting in active concert with one another such that the acts of each were fully attributable to the
27 others in all material respects. Plaintiff is further informed and believe that at all material times
28 herein mentioned Defendants DOES 1 through 10, inclusive, were the alter ego of Defendants,

and vice versa, in that there existed a unity of interest and ownership between said Defendants such that any separateness between them ceased to exist and Defendants exercised undue dominance, control, influence, and management over Defendants DOES 1 through 10, inclusive.

V. CLASS ACTION ALLEGATIONS

25. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

26. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The Class, also referred to as the “Represented Employees,”

27. The relevant time period for this class action is defined as the time period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period.”)

28. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to represent is defined as follows:

All current and former non-exempt employees employed by Defendants in the State of California at any time beginning four years preceding the filing of this Complaint through class certification and/or preliminary approval.

29. Plaintiff also seeks to represent the following subclasses:

Unpaid Wage Subclass

All Represented Employees who did not receive compensation for all hours worked on at least one occasion during the Relevant Time Period.

Overtime Subclass

All Represented Employees who worked over 8 hours in a shift or 40 hours in a week on at least one occasion during the Relevant Time Period.

Meal Break Subclass

All Represented Employees who worked a shift in excess of 5 hours during the Relevant Time Period

Rest Break Subclass

All Represented Employees who worked a shift of at least 3.5 hours during the Relevant Time Period.

Business Expenses Subclass

All Represented Employees who incurred necessary expenditures or losses in direct consequence of the discharge of his or her duties, or in the obedience to directions of Defendants during the Relevant Time Period.

Waiting Time Penalties Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action until class certification.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action until class certification.

30. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

31. Plaintiff, as Class Representative, is a member of the class that she seeks to represent.

32. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

33. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

34. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the class, including

without limitation:

i. Whether Defendants violated the California Labor Code and IWC Wage Order by failing to pay Plaintiff and the Unpaid Wage Subclass at least the minimum wage for each hour worked;

ii. Whether Defendants violated the California Labor Code and IWC Wage Order by failing to pay Plaintiff and the Overtime Subclass overtime wages for overtime hours worked;

iii. Whether Defendants violated the California Labor Code and IWC Wage Order by failing to provide Plaintiff and the Meal Period Subclass compliant and off-duty meal and rest periods;

iv. Whether Defendants violated the California Labor Code and IWC Wage Order by failing to provide Plaintiff and the Rest Period Subclass with separate hourly compensation for rest and recovery periods and other nonproductive time as required by Labor Code § 226.7.

v. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Business Expenses Subclass for business expenses incurred while discharging their duties or in obedience to the directions of their employer;

vi. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and Wage Statement Penalties Subclass with complete, accurate, itemized wage statements; and

35. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including those pertaining to failure to pay minimum wages, failure to pay overtime wages, failure to provide meal breaks, failure to provide

1 rests breaks, and failure to provide separate compensation for rest and recovery periods and other
2 nonproductive time, failure to reimburse business expenses, failure to timely pay final wages,
3 and failure to provide accurate itemized wage statements. Plaintiff further seeks the same types
4 of damages, penalties, and other relief on the same theories and legal grounds as the members of
5 the Class that she seeks to represent.

6 36. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
7 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
8 conflict with those of the Class. Class Representative's counsel are competent and experienced in
9 litigating large employment class actions and other complex litigation matters, including cases
10 like this case.

11 37. **Superiority of Class Action.** Class certification is appropriate because a class
12 action is superior to other available means for the fair and efficient adjudication of this
13 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
14 law and fact common to the Class predominate over any questions affecting only individual
15 members of the Class. Each Represented Employee has been damaged and is entitled to
16 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
17 treatment will allow those similarly situated persons to litigate their claims in the manner that is
18 most efficient and economical for the parties and the judicial system.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

21 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

22 (Against All Defendants)

23 38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 39. Plaintiff and members of the Unpaid Wage Subclass were not exempt from the
26 requirement to be paid at least the applicable California minimum wage throughout the statutory
27 period for each hour worked.

28 40. At all relevant times, Plaintiff and the Unpaid Wage Subclass were illegally not

1 paid proper minimum and/or regular wages when performing on-duty tasks such as off-the-clock
2 charting and other administrative duties. Additionally, Plaintiff and Unpaid Wage Subclass were
3 required to record meal periods regardless of whether they were able to take them resulting in
4 unpaid time.

5 41. As a result of Defendants' policies or practices described above, Plaintiff and the
6 Unpaid Wage Subclass were required to perform off-the-clock work that Defendants either knew
7 or should have known they were performing.

8 42. Consequently, Defendants violated California Labor Code laws and minimum
9 and/or regular wage laws, including the Labor Code and IWC Wage Orders.

10 43. Plaintiff is informed and believes and thereon alleges that Defendants
11 intentionally, willfully, and improperly failed to pay wages to her and Unpaid Wage Subclass for
12 each hour worked in violation of the Labor Code and IWC Wage Orders.

13 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
14 members of the Unpaid Wage Subclass were entitled to be paid all such earned wages
15 throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

16 45. At all material times, Defendants and DOES 1 through 10 were and/or are
17 Plaintiff's and the Unpaid Wage Subclass' employers or person acting on behalf of Plaintiff and
18 the Unpaid Wage Subclass' employer, within the meaning of California Labor Code § 558, who
19 violated or caused to be violated provision or provisions of the California Labor Code or any
20 order of the Industrial Welfare Commission regulating hours and days of work.

21 46. At all relevant times, Defendants failed to pay Plaintiff and the Unpaid Wage
22 Subclass all wages to which they were entitled, thereby receiving an economic benefit.

23 47. As a result of Defendants' wrongful conduct, Plaintiff and the Unpaid Wage
24 Subclass have been damaged in amounts to be proven at trial.

25 48. Plaintiff, on behalf of herself and the Unpaid Wage Subclass, seeks recovery of
26 all unpaid wages, including unpaid wages, liquidated damages, penalties, interest, attorneys' fees
27 and costs of suit against Defendants in an amount to be proven at trial.
28

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204, 510, and 1198; IWC Wage Order § 3(A))

(Against All Defendants)

49. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

50. At all times relevant to this First Amended Complaint, Labor Code section 510(a) was in effect and provided: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

51. At all times mentioned, Plaintiff and members of the Overtime Subclass worked shifts that consisted of more than eight hours in a workday and/or more than forty hours in a work week and were not paid proper overtime wages for all hours worked. For instance, during certain periods when Plaintiff worked overtime hours, she was still compensated at her base rate of pay. In addition, she was forced to work off-the-clock during overtime hours to complete her required daily tasks.

52. Overtime pay is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of remuneration. Under California law, the determination of regular rate of pay for purposes of determining overtime pay must include the employee’s commissions, bonuses, or other non-hourly compensation. Labor Code section 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other methods of calculation.”

53. Accordingly, by requiring Plaintiff and the Overtime Subclass to work in excess of eight hours per day and/or forty hours per week and without properly compensating overtime wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

1 54. As a result of the unlawful acts of Defendants, Plaintiff and the Overtime
2 Subclass have been deprived of overtime wages in amounts to be determined at trial, and are
3 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and
4 costs, pursuant to Labor Code sections 1194 and 1199, Code of Civil Procedure section 1021.5,
5 and Civil Code section 3287.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

9 (Against All Defendants)

10 55. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 56. At all times relevant hereto, California Labor Code Section 512 provided that "An
13 employer may not employ an employee for a work period of more than five hours per day
14 without providing the employee with a meal period of not less than 30 minutes...An employer
15 may not employ an employee for a work period of more than 10 hours per day without providing
16 the employee with a second meal period of not less than 30 minutes..."

17 57. California Labor Code section 226.7 provides (a) No employer shall require any
18 employee to work during any meal or rest period mandated by an applicable order of the
19 Industrial Welfare Commission, and (b) if an employer fails to provide an employee a meal
20 period or rest period in accordance with an applicable order of the Industrial Welfare
21 Commission, the employer shall pay the employee one hour of additional pay at the employee's
22 regular rate of compensation for each work day that the meal or rest break is not provided."

23 58. Subdivision 11 of the applicable IWC's Wage Orders provides: (a) "No employer
24 shall employ any person for a work period of more than five (5) hours without a meal period of
25 not less than 30 minutes..." and (b) If an employer fails to provide an employee a meal period in
26 accordance with the applicable provisions of this order, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided..."

1 59. Plaintiff and the Meal Period Subclass were not provided the meal periods they
2 were entitled to under California law. Specifically, Plaintiff and the Meal Period Subclass
3 worked shifts greater than five hours but was not provided with an off-duty thirty (30) minutes
4 meal period within the first five hours of her shifts and/or a second off-duty meal period prior to
5 the start of the tenth hour of her shifts.

6 60. When Defendants failed to provide Plaintiff and the Meal Period Subclass with
7 their required meal periods, Defendants did not pay Plaintiff and the Meal Period Subclass one
8 additional hour of pay at their regular rate of compensation for each day that they were not
9 provided a compliant meal period.

10 61. By their failure to provide Plaintiff and the Meal Period Subclass with the meal
11 periods required by California law, and failing to provide compensation for such unprovided
12 meal periods, as alleged above, Defendants willfully violated the provisions of Labor Code
13 section 512 and applicable Wage Orders.

14 62. As a result of Defendants' unlawful conduct, Plaintiff and the Meal Period
15 Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid
16 additional compensation owed for missed meal periods.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST BREAKS**

19 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

20 (Against All Defendants)

21 63. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 64. California Labor Code section 226.7 states "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the IWC."

25 65. The applicable IWC Wage Order states with regards to rest periods: (a) Every
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period. The authorized rest period shall be based
28 on the total hours worked daily at the rate of then (10) minutes net rest time per four (4) hours or

1 a major fraction thereof...Authorized rest period time shall be counted as hours worked for
2 which there shall be no deduction from wages, and (b) If an employer fails to provide an
3 employee a rest period in accordance with the applicable provisions of this Order, the employer
4 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
5 each work day that the rest period is not provided."

6 66. Pursuant to Labor Code section 226.7, if an employer fails to provide an
7 employee with a paid rest period as provided in the applicable IWC Wage Order, the employer
8 shall pay the employee one additional hour of pay at the employee's regular rate of
9 compensation for each work day that the rest period was not provided.

10 67. Plaintiff and the Rest Period Subclass were not provided the paid, off-duty rest
11 periods they were entitled to. When Defendants failed to provide Plaintiff and the Rest Period
12 Subclass with their required rest periods, Defendants did not pay them one additional hour of pay
13 at their regular rate of compensation for each day that they were not provided a compliant rest
14 period.

15 68. By their failure to provide Plaintiff and the Rest Period Subclass the rest periods
16 contemplated by California law, and failing to provide compensation for such unprovided rest
17 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section
18 226.7 and applicable Wage Orders.

19 69. As a result of Defendants' unlawful conduct, Plaintiff and the Rest Period
20 Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid
21 additional pay owed for missed rest periods.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 (Labor Code § 2802 and IWC Wage Order § 9(B))

25 (Against All Defendants)

26 70. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
27 as if fully alleged herein.

28 71. Plaintiff and the Business Expenses Subclass are and/or were employees of

1 Defendants who did not receive proper protections and benefits of the laws governing
2 reimbursement of business expenses.

3 72. Labor Code § 2802(a) requires that the employer indemnify its employees for
4 expenses and losses incurred while discharging their duties or in obedience to the directions of
5 their employer.

6 73. At all relevant times herein, as a condition of employment, Plaintiff and the
7 Business Expenses Subclass were required to incur substantial expense in direct consequence of
8 the discharge of their duties for Defendants without reimbursement. For example, Plaintiff and
9 the Business Expenses Subclass incurred various expenses in relation to the use of their personal
10 vehicle to carry out their duties for Defendants, including but not limited to travelling to client's
11 houses for their appointments, without reimbursement. Further, Plaintiff Business Expenses
12 Subclass were forced to use their personal computers, internet service, and cell phones without
13 compensation when they worked off-the-clock from home.

14 74. At all relevant times, Defendants failed to reimburse Plaintiff and the Business
15 Expenses Subclass for expenses incurred in direct consequence of the discharge of their duties
16 for Defendants, thereby receiving an economic benefit.

17 75. Defendants violated Labor Code § 2802 every pay period with respect to Plaintiff
18 and each and every member of the Business Expenses Subclass because Defendant failed to
19 reimburse Plaintiff and the Business Expenses Subclass for expenses incurred while discharging
20 their duties or obedience to the directions of their employer.

21 76. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
22 Order § 9(B), Plaintiff and the Business Expenses Subclass have suffered, and continue to suffer,
23 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
24 compel Defendants to fully perform their obligations under the law, all in an amount to be
25 proved at time of trial.

26 77. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
27 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
28 civil actions, and said interest will accrue from the date on which the employee incurred the

1 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
2 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
3 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

4 78. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
5 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
6 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
7 section." Therefore, Plaintiff and the Business Expenses Subclass seek to recover the
8 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
9 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
10 attorney's fees will be in an amount to be proved at the time of trial.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY FINAL WAGES**

13 (Labor Code § 201 – 203)

14 (Against All Defendants)

15 79. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 80. Plaintiff and the Waiting Time Penalties Subclass are and/or were "non-exempt"
18 employees of Defendants who did not receive proper protections and benefits of the laws
19 governing the timing and payment of wages.

20 81. Labor Code § 201 requires that the employer immediately pay any wages, without
21 abatement or reduction, to any employee who is discharged.

22 82. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
23 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
24 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

25 83. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
26 penalty from the due date thereof at the same rate until paid or until an action therefore is
27 commenced, but the wages shall not continue for more than thirty (30) days.

28 84. At all relevant times, Defendants failed to pay all wages due and owing to

1 Plaintiff and the Waiting Time Penalties Subclass upon separation of employment within the
2 time required by Labor Code §§ 201 – 202 because Defendants failed to pay Plaintiff and
3 Waiting Time Penalties Subclass at least the minimum wage for each hour worked, overtime
4 wages for overtime hours worked, and premium pay for meal and rest periods that were not
5 provided.

6 85. Plaintiff alleges that, at all times material to this action, Defendants had a planned
7 pattern and practice of failing to timely pay to Plaintiff and members of the Waiting Time
8 Penalties Subclass all wages due and owing upon separation of employment as required by Labor
9 Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff
10 and the Waiting Time Penalties Subclass the above-described waiting time penalty, all in an
11 amount to be shown according to proof at trial and within the jurisdiction of this Court.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

14 (Labor Code § 226)

15 (Against All Defendants)

16 86. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 87. Plaintiff and members of the Wage Statement Penalties Subclass are and/or were
19 employees of Defendants who did not receive proper protections and benefits of the laws
20 governing the provision of accurate itemized wage statements.

21 88. Labor Code § 226(a) requires that employers furnish its employees with written
22 itemized wage statements, semimonthly or at the time of each payment of wages, that show “(1)
23 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
24 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
25 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
26 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
27 dates of the period for which the employee is paid, (7) the name of the employee and only the
28 last four digits of his or her social security number or an employee identification number other

1 than a social security number, (8) the name and address of the legal entity that is the employer
2 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
3 name and address of the legal entity that secured the services of the employer, and (9) all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate by the employee...”

6 89. Defendants failed to provide Plaintiff and the Wage Statement Penalties Subclass
7 accurate itemized wage statements that contained all of the information required by Labor Code
8 Section 226(a). Specifically, Plaintiff and the Wage Statement Penalties Subclass did not receive
9 wage statements that accurately stated their gross wages, total hours worked, net wages earned,
10 and all applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate.

12 90. Defendants’ failure to provide the required writing deprived the Wage Statement
13 Penalties Subclass, including Plaintiff, of the ability to know, understand, and question the
14 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
15 the Wage Statement Penalties Subclass, including Plaintiff, had no way to dispute the resulting
16 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
17 Defendants. As a direct result, the Wage Statement Penalties Subclass have suffered and
18 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
19 on such wages and expenses and attorney’s fees in seeking to compel Defendants to fully
20 perform its obligation under state law, all to their respective damages in amounts according to
21 proof at trial.

22 91. As a result of Defendants’ knowing and intentional failure to comply with Labor
23 Code § 226(a), the Wage Statement Penalties Subclass, including Plaintiff, have suffered an
24 injury in that each was prevented from knowing, understanding and disputing the wage payments
25 paid to them. Furthermore, the members of the Wage Statement Penalties Subclass have each
26 suffered an injury in that the failure to show all wages earned on the itemized wage statements
27 resulted in each member of the Wage Statement Penalties Subclass being denied all necessary
28 deductions, payments, and withholdings owed by the employer, including, but not limited to, the

1 failure to make all necessary contributions for unemployment benefits, social security benefits,
2 proper payment of taxes and withholdings, and other mandated state and federal benefits.

3 92. Plaintiff has also been injured as a result of having to bring this action to attempt
4 to obtain correct wage information following Defendants' refusal to comply with many of the
5 mandates of California's Labor Code and related laws and regulations.

6 93. Labor Code § 226(e) requires said Defendants to pay the greater of all actual
7 damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation
8 occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay
9 periods, plus attorney's fees and costs, to each member of the Wage Statement Penalties
10 Subclass, including Plaintiff, who was injured by Defendants' failure to comply with Labor Code
11 § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according
12 to proof at trial.

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR AND UNLAWFUL COMPETITION**

15 (Business and Professions Code § 17200 *et seq.*)

16 (Against All Defendants)

17 94. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 95. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
20 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
21 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
22 due to the unfair and unlawful business practices of Defendants as alleged herein.

23 96. Defendants, and each of them, are "persons" as defined under Business &
24 Professions Code § 17021.

25 97. As alleged herein, Defendants engaged in conduct that violated California's wage
26 and hour laws, including failure to pay earned wages, failure to timely pay final wages, failure to
27 reimburse business expenses, and failure to provide meal and rest periods all in order to decrease
28 their costs and increase their profits.

1 98. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
2 Employees wages and monies and other financial obligations attached thereto to which they were
3 entitled.

4 99. As a result of Defendants' failure to comply with the Labor Code and IWC
5 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
6 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
7 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

8 100. Defendants' violations of the California Labor Code and IWC Wage Orders and
9 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
10 practices because it was done in a systematic manner over a period of time to the detriment of the
11 Plaintiff and all others similarly-situated.

12 101. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
13 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
14 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
15 Code of Civil Procedure § 1021.5.

16 102. A violation of California Business & Professions Code § 17200, *et seq.* may be
17 predicated on the violation of any state or federal law. All of the acts described herein as
18 violations of, among other things, the California Labor Code and IWC Wage Orders, are
19 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
20 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
21 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

22 103. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
23 speedy, and/or adequate remedy at law to redress the injuries which she has suffered as a
24 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
25 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
26 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
27 harm unless Defendants, and each of them, are restrained from continuing to engage in said
28 unfair, unlawful and/or fraudulent business practices.

1 104. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
2 and does seek such relief as may be necessary to disgorge the profits which Defendants have
3 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
4 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
5 Represented Employees are not obligated to establish individual knowledge of the unfair
6 practices of Defendants in order to recover restitution.

7 105. Plaintiff, individually, and on behalf of the Represented Employees, is further
8 entitled to and does seek a declaration that the above described business practices are unfair,
9 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
10 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
11 the future.

12 106. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and the
13 Represented Employees are entitled to restitution of the wages withheld and retained by
14 Defendants during a period that commences four years prior to the filing of the Complaint; a
15 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
16 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
17 Procedure § 1021.5 and other applicable laws; and an award of costs.

18 **VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF**
19 **ACTION (Labor Code § 2698 – 2699.5)**

20 107. Plaintiff Palmer is an "aggrieved employee" under the PAGA as he was employed
21 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
22 violations alleged herein. As Such, Plaintiff may recover the remedies described herein in a civil
23 action filed on behalf of herself and all other similarly situated current and former aggrieved
24 employees in California against whom one or more of the alleged violations was committed.

25 108. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
26 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
27 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
28

1 in Arias v. Superior Court (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
2 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

3 109. Pursuant to Labor Code § 2699.3(a), on June 5, 2020, Plaintiff gave written notice
4 by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified
5 mail to Defendants Charter Hospice, Inc., Charter Hospice of Colton, LLC, Arch B. Gilbert, and
6 Fred Frank of the specific provisions of the Labor Code alleged to have been violated, including
7 the facts and theories to support the alleged violations. More than sixty-five (65) days have
8 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
9 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
10 satisfied the administrative prerequisites to suit under the PAGA.

11 **NINTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE**

13 **(Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)**

14 110. Plaintiff realleges and incorporates the paragraphs 1-24 and 107-109 of the First
15 Amended Complaint as if fully alleged herein.

16 111. Plaintiff and the Represented Employees were not exempt from the requirement
17 to be paid at least the applicable California minimum wage throughout the statutory period for
18 each hour worked.

19 112. At all relevant times herein, Plaintiff and the Represented Employees were
20 illegally not paid proper minimum and/or regular wages when performing on-duty tasks such as
21 off-the-clock charting and other administrative duties. Additionally, Plaintiff and Represented
22 Employees were required to record meal periods regardless of whether they were able to take
23 them resulting in unpaid time. As a result, Plaintiff and the Represented Employees were
24 deprived of minimum wages for each hour worked.

25 113. As a result of Defendants’ policy or practice described above, Plaintiff and the
26 Represented Employees were required to perform off-the-clock work that Defendants either
27 knew or should have known they were performing.

28 114. Consequently, Defendants violated California Labor Code laws and minimum

1 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
2 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

3 115. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **TENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

8 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

9 116. Plaintiff realleges and incorporates the paragraphs 1-24 and 107-115 of the First
10 Amended Complaint as if fully alleged herein

11 117. Plaintiff and the Represented Employees were "non-exempt" employees of
12 Defendants who did not receive proper protections and benefits of the laws governing payment
13 of overtime wages.

14 118. Labor Code § 204 requires that the employer timely pay all overtime wages to its
15 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
16 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
17 any one workweek shall be compensated at the rate of no less than one and one-half times the
18 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
19 in one workday shall be compensated at twice the regular rate of pay for an employee.

20 119. At all relevant times, Plaintiff and the Represented Employees were required by
21 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper
22 overtime compensation. For instance, Plaintiff and Represented Employees were required to
23 provide hospice nursing services to multiple clients each day. Because they were providing in
24 home care to the clients at each location, and otherwise driving throughout large territories to
25 multiple clients' homes each day, there wasn't enough time to complete all necessary and
26 required charting during the home visits. As a result, Plaintiff and Represented Employees were
27 forced to work off-the-clock from home each night.

28 120. As a result of Defendants' failure to pay for off-the-clock work performed by the

1 Represented Employees , Defendants violate Labor Code §§ 204 and 510 and the applicable
2 IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented
3 Employees because Defendants failed to pay Plaintiff and members of the Represented
4 Employees for all hours worked, including overtime hours, and required Plaintiff and the
5 Represented Employees to work without being properly compensated for all overtime wages
6 earned.

7 121. Plaintiff is informed and believes and thereon alleges that Defendants
8 intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff
9 and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and
10 1197.

11 122. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **ELEVENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

16 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

17 123. Plaintiff realleges and incorporates the paragraphs 1-24 and 107-122 of the First
18 Amended Complaint as if fully alleged herein.

19 124. Plaintiff and the Represented Employees are and/or were “non-exempt”
20 employees of Defendants who did not receive proper protections and benefits of the laws
21 governing mandatory meal periods.

22 125. Labor Code § 226.7 requires employers, including Defendants, to provide non-
23 exempt employees with meal periods as mandated by the Industrial Welfare Commission.

24 126. Labor Code § 512(a), in part, provides that employers, including Defendants, may
25 not employ an employee for a work period of more than five hours per day without providing an
26 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and the employee. Employers

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

3 127. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
4 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
5 compensation for each meal period that is missed.

6 128. At all relevant times herein, Plaintiff and the Represented Employees were denied
7 the 30-minute meal periods to which they were entitled.

8 129. At all relevant times, Plaintiff and the Represented Employees were denied 30-
9 minute off-duty meal periods, as mandated by California law, during their employment with
10 Defendants. As such, Plaintiff and the Represented Employees were regularly not provided with
11 uninterrupted meal periods of at least 30 minutes, as required by California law.

12 130. As a result of Defendants' policies and practices, Plaintiff and the Represented
13 Employees were subjected to meal period violations when they were: (1) unable to take a meal
14 period due to workload, (2) forced to take an on-duty meal period while under the control of
15 Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a
16 mandated second meal period on shifts in excess of 10 hours.

17 131. On information and belief, Plaintiff and the Represented Employees did not
18 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
19 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
20 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
21 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
22 Employees to take meal periods in accordance with California law.

23 132. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
24 Order every pay period with respect to Plaintiff and the Represented Employees because
25 Plaintiff and the Represented Employees were not provided with all mandatory meal and
26 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
27 compensation in lieu thereof.
28

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

134. Plaintiff realleges and incorporates the paragraphs 1-24 and 107-132 of the First Amended Complaint as if fully alleged herein.

13 136. Labor Code § 226.7 requires employers, including Defendants, to provide rest
14 breaks to its non-exempt employees as mandated by Order of the Industrial Welfare
15 Commission.

21 138. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
22 Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of
23 compensation for each day that the rest period is not provided.

139. At all relevant times herein, Plaintiff and the Represented Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants' policy and practice of failing to pay for downtime intervals between classes meant that all rest breaks were unpaid. As a result, Plaintiff

1 and the Represented Employees were not provided net rest periods of at least 10 minutes for
2 each 4-hour work period, or major fraction thereof.

3 140. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period with respect to Plaintiff and the Represented Employees because
5 Plaintiff and the Represented Employees were not provided with all mandatory rest periods and
6 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
7 compensation in lieu thereof.

8 141. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

11 **THIRTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 (Labor Code § 2802; IWC Wage Order § 9)

14 142. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-142 of the First
15 Amended Complaint as if fully alleged herein.

16 143. Plaintiff and the Represented Employees are and/or were employees of
17 Defendants who did not receive proper protections and benefits of the laws governing
18 reimbursement of business expenses.

19 144. Labor Code § 2802(a) requires that the employer indemnify its employees for
20 expenses and losses incurred while discharging their duties or in obedience to the directions of
21 their employer.

22 145. At all relevant times herein mentioned, as a condition of employment, Plaintiff
23 and the Represented Employees Plaintiff and the Represented Employees were required to incur
24 substantial expense in direct consequence of the discharge of their duties for Defendants without
25 reimbursement. For example, Plaintiff and the Represented Employees incurred various
26 expenses in relation to the use of their personal vehicle to carry out their duties for Defendants,
27 including but not limited to travelling to client's houses for their appointments, without
28 reimbursement. Further, Plaintiff and the Represented Employees were forced to use their

1 personal computers, internet service, and cell phones without compensation when they worked
2 off-the-clock from home.

3 146. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
4 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
5 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants,
6 including, but not limited to, the cost of acquiring, utilizing, and maintaining a smart phone and
7 related cellular phone expenses.

8 147. Defendants violated Labor Code §2802 every pay period with respect to Plaintiff
9 and each and every aggrieved employee because Defendant failed to reimburse Plaintiff and the
10 Represented Employees for expenses incurred while discharging their duties or obedience to the
11 directions of their employer.

12 148. At all relevant times herein, Defendants failed to reimburse the Represented
13 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
14 thereby receiving an economic benefit.

15 149. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
16 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
17 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
18 compel Defendants to fully perform their obligations under the law, all in an amount to be
19 proved at time of trial.

20 150. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
21 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
22 civil actions, and said interest will accrue from the date on which the employee incurred the
23 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
24 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
25 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

26 151. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
27 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
28 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this

1 section.”

2 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
3 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
4 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

5 **FOURTEENTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES**

7 (Labor Code §§ 201 – 204)

8 153. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-142 of the First
9 Amended Complaint as if fully alleged herein.

10 154. Plaintiff and the Represented Employees are and/or were “non-exempt”
11 employees of Defendants who did not receive proper protections and benefits of the laws
12 governing the timing and payment of wages.

13 155. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

15 156. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
16 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
17 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

18 157. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
19 penalty from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, but the wages shall not continue for more than thirty (30) days.

21 158. At all relevant times, Defendants engaged in the practice of failing to pay all
22 wages due and owing to Plaintiff and the Represented Employees upon separation of
23 employment, including, but not limited to minimum and overtime wages, wage premiums,
24 among others.

25 159. Furthermore, Labor Code § 204(a) states that all wages earned by a person are
26 due and payable twice during each calendar month, and further states that wages earned during
27 the first through fifteenth days of the month must be paid no later than the twenty-sixth day of
28 the month, and that wages earned between the sixteenth and last day of the month must be paid

1 by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this
2 section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
3 payroll if the wages are paid not more than seven calendar days following the close of the payroll
4 period.”

5 160. At all relevant times herein, Defendants did not provide Plaintiff and the
6 Represented Employees with all wages due and owing each pay period, including, but not
7 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
8 within the time specified by Labor Code § 204.

9 161. Plaintiff alleges that, at all times material to this action, Defendants had a planned
10 pattern and practice of failing to timely pay to Plaintiff and the Represented Employees all
11 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
12 202.

13 162. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
15 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

16 **FIFTEENTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Labor Code § 226)

20 163. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-152 of the First
21 Amended Complaint as if fully alleged herein.

22 164. Plaintiff and the Represented Employees are and/or were employees of
23 Defendants who did not receive proper protections and benefits of the laws governing the
24 provision of accurate itemized wage statements.

25 165. Labor Code § 226(a) requires that employers furnish its employees with written
26 itemized wage statements, semimonthly or at the time of each payment of wages, that show “(1)
27 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
28 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid

1 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
2 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
3 dates of the period for which the employee is paid, (7) the name of the employee and only the
4 last four digits of his or her social security number or an employee identification number other
5 than a social security number, (8) the name and address of the legal entity that is the employer
6 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
7 name and address of the legal entity that secured the services of the employer, and (9) all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee...”

10 166. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Represented Employees because Defendants failed to provide a wage statement to
12 Plaintiff and the Represented Employees that complied with the requirements of Labor Code §
13 226(a) by failing to accurately state gross wages earned, failure to accurately state total hours
14 worked, failure to accurately state all deductions, failure to accurately state net wages earned,
15 and failure to state all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours at each hourly rate by the employee.

17 167. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
18 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
19 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

20 **VI. PRAYER FOR RELIEF**

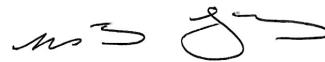
21 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others
22 similarly situated prays for judgment and relief against Defendants, jointly and severally, as
23 follows:

24 1. As to the Ninth through Fifteenth Causes of Action, the assessment of all
25 applicable and available remedies under the PAGA in accordance with Labor Code § 2699
26 and/or any other damages permitted under the PAGA provided for by the California Labor Code
27 Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) as a result of Defendants’
28 violations of the Labor Code as alleged herein;

2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 218.6, 221, 223, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

Dated: August 10, 2020

FERNANDEZ & LAUBY LLP



BY:

Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff