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and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

TIFFANY NEWBY, individually and on
behalf of all similarly situated employees of
Defendants in the State of California,

Plaintiff,

v.

COMMUNITY RESEARCH FOUNDATION,
INC.; and DOES 1 THROUGH 50, inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

12/11/2020 at 03:34:50 PM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

Case No.: 37-2020-00045600-CU-OE-CTL

Unlimited Civil

Amount Demanded exceeds \$25,000.00

CLASS ACTION COMPLAINT
[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Indemnify Necessary Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Timely Pay All Wages Due Upon Separation of Employment;
8. Violation of Business & Professions Code §17200, *et seq.*; and

REPRESENTATIVE ACTION FOR PAGA
PENALTIES

[Labor Code § 2698, *et seq.*]

9. Violation of the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2699, *et seq.*

– JURY TRIAL DEMANDED –

TIFFANY NEWBY, individually and on behalf of all other similarly situated employees of EXECUTIVE MAINTENANCE, INC., and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff TIFFANY NEWBY (“Plaintiff”) brings this individual and putative class action against Defendants COMMUNITY RESEARCH FOUNDATION, INC., and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders.

2. Plaintiff brings this action on behalf of all non-exempt employees, who were employed by Defendants in the State of California and who worked as a non-exempt employee during the applicable relevant time period (hereinafter “similarly situated employees”).

3. Plaintiff also brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”) against Defendant for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff brings this action on behalf of all other current and former non-exempt employees of Defendant in the State of California who have suffered at least one of the Labor Code violations described herein during the applicable relevant time period (hereinafter “aggrieved employees”).

4. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

5. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other aggrieved employees in California include, but are not limited to:

- a. Failure to provide a first off-duty meal period of at least 30-minutes before the commencement of the sixth hour of work and a second off-duty meal period of at least 30-minutes before the commencement of the eleventh hour of work;
- b. Failure to authorize and permit off-duty paid rest periods;
- c. Failure to pay all minimum and regular wages for all hours worked;
- d. Failure to pay all overtime wages;
- e. Failure to indemnify necessary business expenses;

- f. Failure to maintain accurate records;
- g. Failure to provide accurate itemized wage statements; and
- h. Failure to timely pay all wages due during and upon separation of employment.

6. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory penalties, and monetary relief. Plaintiff seeks to recover, *inter alia*, unpaid wages, interest, attorney's fees, damages, liquidated damages, statutory penalties, civil penalties, and costs pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2804, the California Business and Professions Code § 17200, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2699, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiff reserves the right to name additional representatives.

II. PARTIES

A. Plaintiff

8. Plaintiff is a former employee of Defendants, who, at all relevant times, was employed as a Psychosocial Rehabilitation Specialist ("PRS") and worked for Defendants in a non-exempt position in San Diego County.

9. Plaintiff is a resident of the State of California and currently resides in San Diego County.

10. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section 2699(c) because she was employed by Defendants and suffered one or more of the violations committed by Defendants.

11. At all relevant times, Plaintiff and, on information and belief, other aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendants

12. Defendant Community Research Foundation, Inc. is a California company with its principal place of business in San Diego, California, operating and doing business in the state of California, including San Diego County.

13. Defendants' wrongful conduct, as alleged herein, occurred in the County of San Diego and

1 in the State of California.

2 14. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named
3 or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of
4 California and was Plaintiff's and other aggrieved employees' "employer" as defined in and subject to the
5 California Labor Code and the applicable IWC Wage Order.

6 15. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.
7 The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently
8 unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of
9 the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed
10 and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged
11 in this Complaint.

12 16. Plaintiff and all other aggrieved employees are, and at all relevant times were, non-exempt
13 employees of each Defendants, including DOES 1 through 50, within the meanings set forth in the
14 California Labor Code and applicable IWC Wage Order.

15 17. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
16 or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in
17 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment
18 and ratified the acts of each other Defendant.

19 18. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
20 or fictitious, exercised control over Plaintiff's and other similarly situated employees' and aggrieved
21 employees' wages, hours and/or working conditions.

22 19. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
23 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
24 or policy, and the acts of each Defendants are legally attributable to the other Defendants.

25 20. Each Defendant, whether named or fictitious, was the alter ego of each of the other
26 Defendants at all relevant times herein

27 21. A unity of interest and ownership between each Defendant, whether named or fictitious,
28 exists such that all Defendants acted as a single employer of Plaintiff and all other aggrieved employees.

1 before their fifth hour of work.

2 29. Plaintiff and, on information and belief, other similarly situated and/or aggrieved
3 employees of Defendants did not sign a valid on-duty meal period agreement at any point during their
4 employment with Defendants, nor did they properly waive any of their meal periods.

5 30. Although the nature of Plaintiff and other similarly situated and/or aggrieved employees'
6 work did not require her to take on-duty meal breaks, Defendants assigned Plaintiff and other similarly
7 situated and/or aggrieved employees such a large volume of work and scheduled so many client
8 appointments that they were regularly unable take their full, timely, off-duty, uninterrupted meal breaks.

9 31. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and belief,
10 other similarly situated and/or aggrieved employees were denied the opportunity to take legally compliant
11 thirty-minute meal periods, in violation of the applicable Wage Order.

12 32. Nevertheless, Defendants instructed Plaintiffs and other similarly situated and/or aggrieved
13 employees to record timely 30-minute meal breaks in their time records.

14 33. For the same reasons, Plaintiff and, on information and belief, other similarly situated
15 and/or aggrieved employees were also not authorized and permitted to take off-duty, 10-minute rest
16 periods for every four hours of work, or major fraction thereof. Due to the volume of work and number of
17 scheduled client appointments, Plaintiff and other similarly situated and/or aggrieved employees had to
18 remain on duty throughout the entirety of their shifts. Thus, as a result of Defendants' illegal policies and
19 practices, Plaintiff and, on information and belief, other similarly-situated aggrieved employees were not
20 authorized or permitted to take legally compliant rest periods, in violation of the applicable Wage Order.

21 34. Although Plaintiff and, on information and belief, other aggrieved employees did not
22 receive legally compliant meal or rest periods, Defendants did not compensate Plaintiff and, on
23 information and belief, other aggrieved employees an additional hour of pay at their regular rate of pay
24 for the times that Plaintiff and other aggrieved employees were not authorized or permitted to take a
25 compliant and timely meal or rest period, in violation of Labor Code § 226.7.

26 35. Plaintiff and, on information and belief, other aggrieved employees were not compensated
27 minimum, regular, and overtime wages owed and earned because they were not compensated for all hours
28 permitted and suffered to work.

36. Defendants maintained a policy and practice that caused Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees to perform work without proper compensation. For example, even though Plaintiff and other similarly situated and/or aggrieved employees were unable to take compliant, off-duty meal periods, Defendants instructed them to record timely 30-minute meal periods on their time records. As a result, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees were not compensated for the labor they performed during their on-duty meal periods.

37. Moreover, Defendants instructed Plaintiff and other similarly situated and/or aggrieved employees to clock out each day at the end of their scheduled shifts even though they regularly had to continue working in order to complete their assigned tasks for the day. Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees were never paid for the work they performed off the clock.

38. Further, Defendants required Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees to carry a “crisis pager” during on-call weekend shifts. Each time the crisis pager rang, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees were obligated to answer any calls that came in, stay on the line with clients until their issues were resolved, and prepare a report about the call. Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees would receive between five (5) and thirty (30) calls each weekend. However, regardless of how much time Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees spent responding to the crisis pager and preparing reports, Defendants paid them only one hour for each weekend that they were on-call with the crisis pager. As such, Defendants failed to meet its obligations to pay all minimum, regular, and overtime wages owed under California law.

39. Defendants also failed to pay all overtime wages at the proper rate of pay because they failed to include all non-discretionary bonuses and premiums into Plaintiff’s and other similarly situated and/or aggrieved employees’ regular rate of pay.

40. Defendants failed to indemnify Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, Plaintiff and, on information and belief, other aggrieved employees were required

1 to use used their personal vehicles for work-related travel but were not properly reimbursed for all travel
2 expenses. Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees
3 also incurred work-related expenses in taking clients to coffee or meals to model proper psychosocial
4 behavior, and were occasionally required to use their personal cell phones to communicate with superiors,
5 co-workers, and clients. Nevertheless, Plaintiff and, on information and belief, other similarly situated
6 and/or aggrieved employees were not fully reimbursed for these business expenses as required by
7 California law.

8 41. As a direct result of Defendants' illegal policies and procedures, Defendants' failed to
9 maintain accurate records reflecting all of Plaintiff's and, on information and belief, other similarly
10 situated and/or aggrieved employees' time worked and wages paid, in violation of California law.

11 42. In addition, and as a result of Defendant's failure to maintain accurate records, the wage
12 statements issued by Defendants did not include the correct total regular and overtime hours worked, the
13 correct amount of gross and net wages earned, total hours worked by the employee, and all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
15 rate by the employee, as required under Labor Code § 226(a). The wage statements did not include the
16 correct number of regular and overtime hours and respective hourly rates for Plaintiff and other similarly
17 situated aggrieved employees when the Company failed to pay the legal minimum and overtime wages to
18 employees as non-exempt as required by the Applicable Wage Order. The wage statements also do not
19 accurately reflect the amount of paid sick hours used and accrued.

20 43. On information and belief, the wage statement omissions and inaccuracies are not a result
21 of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing
22 and intentional omissions by Defendants. In addition, and as a result of these omissions and inaccuracies,
23 Plaintiff and, on information and belief, other similarly situated aggrieved employees are not promptly
24 and easily able to determine the correct hours worked and/or determine the accurate wages due and owing
25 without reference to other documents and information.

26 44. As a direct result of the aforementioned Labor Code violations, Defendants have not paid
27 Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees all wages
28 due and payable during and upon separation of employment, including minimum, regular, and overtime

wages for all hours worked, and meal and rest period premium wages, as required pursuant to Labor Code §§ 201, 202, and 204.

45. To this date, Defendants have not paid Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees all wages owed, including all minimum, regular and overtime wages, and meal and rest period premium wages.

46. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order, Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an employment pattern and practice that violated Business & Professions Code § 17200 *et seq.* Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent actions.

V. CLASS ACTION DESIGNATION

47. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

48. Plaintiff brings Causes of Action One through Nine as a Class Action pursuant to California Code of Civil Procedure § 382 on behalf of himself and all current and former employees of Defendants in California and who worked as a non-exempt employee and who were affected by Defendants' Labor Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

49. Plaintiff seeks to represent the following Classes, which are defined as:

The Non-Exempt Class:

"All current and former non-exempt employees of Defendant COMMUNITY RESEARCH FOUNDATION, INC. who worked in the State of California during any pay period at any time from June 14, 2016, through the present."

50. Plaintiff also seeks to represent the following Subclasses, which are defined as:

The PRS Subclass:

"All members of the Non-Exempt Class, who were employed by Defendant COMMUNITY RESEARCH FOUNDATION, INC. as a Psychosocial Rehabilitation Specialist at any time from June 14, 2016 through the present."

The Waiting Time Penalties Subclass:

“All members of the Non-Exempt Class, whose employment with Defendant COMMUNITY RESEARCH FOUNDATION, INC. ended at any time from June 14, 2016, through the present.”

51. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

52. Causes of Action One through Nine are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. Numerosity

53. The members of the Class and Subclass are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Class and Subclass, Plaintiff is informed and believes that the Class and Subclasses each consist of over 50 individuals. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’ time and payroll records and other personnel records.

B. Commonality and Predominance

54. Common questions of law and fact exist as to all class members and predominate over any questions affecting only individual members of the Class or Subclass. The common questions of law and fact that predominate include, but are not limited to:

- a. Whether Defendants failed to permit Non-Exempt Class members to take a duty-free, thirty-minute meal period before the commencement of the sixth hour of work;
- b. Whether Defendants failed to permit Non-Exempt Class members to take off-duty rest periods of at least 10 minutes for every four hours worked, or major fraction thereof;
- c. Whether Defendants failed to pay one additional hour of pay at the employees’ regular rate of compensation to Non-Exempt Class members when they were not provided with compliant and timely meal and rest periods;
- d. Whether Defendants failed to pay Non-Exempt Class members at least minimum

wages and/or all regular wages owed for all hours or fractions of an hour worked and under the control of Defendants;

- e. Whether Defendants failed to pay Non-Exempt Class members all overtime wages for all hours, or fraction of hours, worked and under the control of Defendants;
- f. Whether Defendants failed to indemnify Non-Exempt Class members for necessary business expenses incurred in direct consequence of the discharge of their duties;
- g. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class members;
- h. Whether Defendants failed to provide Non-Exempt Class members with accurate itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned; and
- i. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

55. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

56. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

57. Plaintiff has no fundamental conflict of interest with the Class or Subclass he seeks to represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him

1 and putative class members.

2 58. Plaintiff retained attorneys who are experienced employment law litigators with significant
3 wage and hour and class action experience.

4 **E. Superiority of Class Action**

5 59. Plaintiff believes a class action is a superior method of litigation for the fair and efficient
6 adjudication of this controversy. Individual joinder of all class members is not practicable. Class action
7 treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient
8 and economical for the parties and the judicial system.

9 60. Plaintiff knows of no difficulty that might be encountered in the management of this suit,
10 which would preclude maintenance as a class action.

11 **VI. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**
12 **REPRESENTATIVE ACTION DESIGNATION**

13 61. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 paragraphs above, as though fully set forth herein.

15 62. The Causes of Action alleged herein are appropriately suited for a Labor Code Private
16 Attorneys General Act of 2004 (“PAGA”) action because:

17 a) Pursuant to California Labor Code § 2699(a), any provision of the Labor Code that
18 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
19 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees, for a
20 violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought
21 by an aggrieved employee on behalf of himself or herself and all other current or former employees
22 pursuant to the procedures specified in § 2699;

23 b) This action involves allegations of violations of provisions of the California Labor
24 Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any
25 departments, divisions, commissions, boards, agencies or employees;

26 c) Plaintiff is an “aggrieved employee” because she was employed by the alleged
27 violators and had one or more of the alleged violations committed against him;

28 d) On July 24, 2020, Plaintiff satisfied the procedural requirements of § 2699.3 by

1 serving the LWDA electronically and Defendant EXECUTIVE MAINTENANCE, INC., via Certified
2 Mail with his notice for wage and hour violations and penalties, including the facts and theories to support
3 each violation. A true and correct copy of Plaintiff's notice and proof of service is attached as **Exhibit A**;

4 e) More than 65 days have passed since Plaintiff served notice via Certified Mail to
5 the LWDA and her employer. Therefore, Plaintiff satisfied all the administrative requirements to pursue
6 civil penalties against Defendants pursuant to Labor Code § 2698, *et seq.*;

7 f) Plaintiff filed this action pursuant to Labor Code § 2699(a) and (f), on behalf of
8 herself and all other aggrieved employees of Defendants to recover all applicable civil penalties.

9 g) Defendants were Plaintiff's employer or person(s) acting on behalf of Plaintiff's
10 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a
11 section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of
12 work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for
13 each underpaid employee, as set forth in Labor Code § 558, at all relevant times; and

14 h) Defendants were Plaintiff's employer or person(s) acting on behalf of Plaintiff's
15 employer either individually or as officers, agents, or employees of another person, within the meaning of
16 California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the
17 minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid
18 employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties
19 imposed pursuant to Labor Code § 203.

20 63. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of herself
21 and all other aggrieved employees of Defendants in California.

22 **VII. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 (Violation of Labor Code §§ 226.7, 512, and 1198 and the "Meal Periods" section of the
26 Applicable IWC Wage Order)

27 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

28 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 paragraphs above, as though fully set forth herein.

2 65. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not
3 employ an employee for a work period of more than five hours per day without providing an employee
4 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of
5 more than 10 hours per day without providing the employee with a second meal period of not less than 30
6 minutes.”

7 66. Labor Code § 226.7 requires that employers, including Defendants, provide their
8 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare
9 Commission, and prohibits employers from requiring any employee “to work during any meal ... period
10 mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states,
11 “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the
12 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
13 compensation for each workday that the meal ... period is not provided.”

14 67. Labor Code § 1198 states that the “maximum hours of work and standard conditions of
15 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
16 for employees. The employment of any employee for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.”

18 68. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall
19 employ any person for a work period of more than five (5) hours without a meal period of not less than
20 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
21 the meal period may be waived by mutual consent of the employer and the employee.” It further states,
22 “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without
23 providing the employee with a second meal period of not less than 30 minutes, except that if the total
24 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
25 employer and employee only if the first meal period was not waived.”

26 69. The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the
27 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
28 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only

1 when the nature of the work prevents an employee from being relieved of all duty and when by written
2 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state
3 that the employee may, in writing, revoke the agreement at any time.”

4 70. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an
5 employer fails to provide an employee a meal period in accordance with the applicable provisions of this
6 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
7 compensation for each workday that the meal period is not provided.”

8 71. On information and belief, Plaintiff and the Non-Exempt Class were subject to the same
9 policies, practices, and procedures governing the provision and scheduling of meal periods.

10 72. On information and belief, Defendants have a pattern and practice of not providing Plaintiff
11 and the Non-Exempt Class with legally compliant 30-minute off-duty meal periods during their shifts,
12 even though they worked more than six (6) hours during their workday.

13 73. Plaintiff and, on information and belief, the Non-Exempt Class were unable to take
14 compliant meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’
15 illegal policies required Plaintiff and, on information and belief, the Non-Exempt Class to remain on duty
16 at all times during their meal periods as described above.

17 74. Thus, as a result of Defendants’ policies, Plaintiff’s and Non-Exempt Class members’ meal
18 periods were regularly on-duty or not taken.

19 75. Plaintiff and, on information and belief, the Non-Exempt Class members did not sign a
20 valid on-duty meal period agreement at any point during their employment with Defendant.

21 76. Therefore, as a result of Defendants’ conduct, including the conduct alleged herein,
22 Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order
23 when Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free
24 meal period before the commencement of their sixth hour of work.

25 77. Consequently, pursuant to Labor Code § 226.7(b) and the “Meal Periods” section of the
26 Wage Order, Defendants was required to pay Plaintiff and the Non-Exempt Class one additional hour of
27 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the
28 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour

1 of work.

2 78. Despite this obligation, Defendants did not pay Plaintiff and, on information and belief, the
3 Non-Exempt Class one additional hour of pay at each employee's regular rate of compensation for each
4 day that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal
5 period before the commencement of their sixth hour of work.

6 79. Instead, on information and belief, Defendants had a common policy and practice of failing
7 to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay for the
8 times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free
9 meal period before the commencement of their sixth hour of work, as required by Labor Code § 226.7(b)
10 and the IWC Wage Order.

11 80. Thus, on information and belief, Defendants intentionally refused to perform their
12 obligations to provide meal periods and further failed to compensate Plaintiff and the Non-Exempt Class
13 with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

14 81. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to
15 Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not
16 provided and the associated use and enjoyment of compensation due and owing to them as a direct result
17 of Defendants' Labor Code and IWC Wage Order violations.

18 82. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited
19 to, all wages due, monies, and interest to the extent permitted by law.

20 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIODS**

23 (Violation of Labor Code §§ 226.7 and 1198 and

24 the "Rest Periods" section of the Applicable IWC Wage Order)

25 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

26 83. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 paragraphs above, as though fully set forth herein.

28 84. Labor Code § 226.7 requires employers, including Defendants, to provide to their

employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

85. Labor Code § 1198 states that the “maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

86. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

87. On information and belief, Plaintiff and the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

88. Plaintiff and, on information and belief, the Non-Exempt Class were not authorized and permitted to take compliant rest periods because Defendants required them to remain on duty at all times.

89. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest ... period is not provided.”

90. Even though Plaintiff and, on information and belief, Non-Exempt Class members were not authorized and permitted to take off-duty rest periods, Defendants did not pay Plaintiff and the Non-Exempt Class appropriate rest period premium wages for each day in which Defendants did not authorize and permit Plaintiff and the Non-Exempt Class to take compliant rest periods, in violation of Labor Code § 226.7 and the applicable IWC Wage Order.

91. On information and belief, Defendants had a common policy, pattern, and practice of failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay for the times that Plaintiff and the Non-Exempt Class were not authorized to take rest periods of at least

1 10 minutes for each four-hour work period, or major fraction thereof.

2 92. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to
3 Defendants' failure to pay an additional hour of pay for each day a rest period was not provided and the
4 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants'
5 Labor Code and IWC Wage Order violations.

6 93. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
7 to, any and all wages due, monies, and interest, to the extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **THIRD CAUSE OF ACTION**

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

11 (Violation of Labor Code §§ 1194, 1197, and 1198 and the "Minimum Wages" section of the
12 Applicable IWC Wage Order)

13 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

14 94. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above, as though fully set forth herein.

16 95. Labor Code § 1197 provides, "[t]he minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
18 minimum wage so fixed is unlawful."

19 96. The "Minimum Wages" section of the applicable IWC Wage Order provides that an
20 employer may not pay employees less than the applicable minimum for all hours worked.

21 97. The applicable IWC Wage Order defines the term "hours worked" as "the time during
22 which an employee is subject to the control of an employer, and includes all the time the employee is
23 suffered or permitted to work, whether or not required to do so."

24 98. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
25 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
26 standard conditions of labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful."

28 99. Plaintiff and, on information and belief, other similarly situated employees were not

1 compensated minimum and regular wages owed and earned because they were not compensated for all
2 hours permitted and suffered to work. Defendants maintained a policy and practice that caused Plaintiff
3 and, on information and belief, other similarly situated employees to perform work off the clock during
4 their meal periods and after the end of their scheduled shifts without proper compensation.

5 100. Moreover, Plaintiff and the PRS Subclass also performed off the clock work when they
6 were assigned to monitor the “crisis pager” but were not properly compensated.

7 101. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
8 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
9 interest thereon, reasonable attorney’s fees, and costs of suit.

10 102. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
11 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

12 103. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use
13 and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and
14 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional
15 limitations of this Court.

16 104. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited
17 to, any and all wages due, monies, interest, liquidated damages, attorney’s fees, and costs to the extent
18 permitted by law.

19 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 (Violation of Labor Code §§ 510, 1194, and 1198, and the “Hours and Days of Work” section of the
23 Applicable IWC Wage Order)

24 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

25 105. Plaintiff re-alleges and incorporates by reference the allegations contained in the
26 paragraphs above, as though fully set forth herein.

27 106. Labor Code § 510 provides, “[a]ny work in excess of eight hours in one workday and any
28 work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of

1 work in any one workweek shall be compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
3 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
4 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the
5 regular rate of pay of an employee.” The “Hours and Days of Work” section of the applicable IWC Wage
6 Order mandate the same requirements.

7 107. Labor Code § 1194 provides that any employee receiving less than the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
9 full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and
10 costs of suit.

11 108. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the
12 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
13 standard conditions of labor for employees. The employment of any employee for longer hours than those
14 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

15 109. The applicable IWC Wage Order defines the term “hours worked” as “the time during
16 which an employee is subject to the control of an employer, and includes all the time the employee is
17 suffered or permitted to work, whether or not required to do so.”

18 110. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class
19 members overtime wages for all hours they worked over eight in a day or forty in a week. For example,
20 Plaintiff and, on information and belief, Non-Exempt Class members were not compensated for their meal
21 periods due to the fact that they were not authorized or permitted to take a thirty (30) minute meal period,
22 and were not compensated for off the clock work performed after the end of their scheduled shifts.

23 111. Additionally, Defendants failed to pay all overtime wages owed to Plaintiff and the Non-
24 Exempt Class because it failed to properly include all non-discretionary bonuses and premiums into the
25 regular rate of pay for overtime purposes.

26 112. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use
27 and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and
28 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional

1 limitations of this Court.

2 113. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
3 to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

7 (Violation of Labor Code § 2802 and § 2804)

8 (Alleged By Plaintiff Individually and on Behalf of the Non-Exempt Class Against Defendants)

9 114. Plaintiff re-alleges and incorporates by reference the allegations contained in the
10 paragraphs above, as though fully set forth herein.

11 115. Labor Code § 2802 requires an employer to indemnify its employees for all necessary
12 expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties
13 of employment.

14 116. Labor Code § 2802(b) states, "[a]ll awards made by a court ... for reimbursement of
15 necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest
16 will accrue from the date on which the employee incurred the necessary expenditure including, but not
17 limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted
18 pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount
19 to be proven at time of trial.

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

23 118. Labor Code § 2804 states, "[a]ny contract or agreement, express or implied, made by any
24 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not
25 deprive any employee of his personal representative of any right or remedy to which he is entitled under
26 the laws of this State."

27 119. Plaintiff and, on information and belief, members of the Non-Exempt Class incurred
28 business expenses in direct consequence of their job duties through the use of their personal vehicles,

1 personal cell phones, and personal funds during meetings with clients.

2 120. Despite Defendants' knowledge that Plaintiff and, on information and belief, Non-Exempt
3 Class members were using their personal cell phones, personal vehicles, and personal funds for work
4 related purposes, Defendants failed to reimburse them for these expenses in violation of Labor Code §
5 2802.

6 121. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the
7 Non-Exempt Class suffered and continue to suffer, substantial losses related to Defendants' failure to
8 indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest
9 on such monies and expenses, and attorney's fees and costs in seeking to compel Defendants to fully
10 perform its obligations under state law, all to their respective damage in amounts according to proof at
11 trial and within the jurisdictional limitations of this Court.

12 122. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available
13 remedies including but not limited to the unpaid balance of the indemnification from Defendants'
14 violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney's fees and costs of
15 suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor
16 Code § 2802 and Code of Civil Procedure § 1021.5. The exact amount of reimbursements, interest, costs
17 and attorney's fees will be in an amount to be proved at time of trial.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 **SIXTH CAUSE OF ACTION**

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

21 (Violation of Labor Code §§ 226, 246, and 1198 and the "Records" section of the
22 Applicable IWC Wage Order)

23 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

24 123. Plaintiff re-alleges and incorporates by reference the allegations contained in the
25 paragraphs above, as though fully set forth herein.

26 124. Labor Code § 226(a) requires that employers, including Defendants, furnish their
27 employees with each wage payment an accurate and itemized writing that shows gross wages earned, total
28 hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee

1 is paid, the name of the employee and the portion of his or her social security number, the name and
2 address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 125. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of
5 all actual damages or the amount specified in Labor Code § 226 per violation.

6 126. Labor Code § 226(e)(2)(B) states, in pertinent part, “an employee is deemed to suffer injury
7 for purposes of this subdivision if the employer fails to provide accurate and complete information as
8 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
9 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount
10 of the gross wages or net wages paid to the employee during the pay period or any of the other information
11 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
12 of subdivision (a).”

13 127. Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to
14 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

15 128. As a direct result of Defendants’ illegal policies and procedures, Defendants’ failed to
16 maintain accurate records reflecting all of Plaintiff’s and, on information and belief, other similarly
17 situated employees’ time worked and wages paid, in violation of California law. In addition, the wage
18 statements issued by Defendants did not include the correct total regular and overtime hours worked, the
19 correct amount of gross and net wages earned, the name of the employee and social security number or in
20 the alternative an employee identification number, and all applicable hourly rates and the corresponding
21 number of hours worked at each hourly rate, as required under Labor Code § 226(a). The wage statements
22 also did not accurately reflect the amount of paid sick hours used and accrued.

23 129. Defendants’ failure to provide accurate wage statements deprived Plaintiff and members
24 of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and
25 rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-
26 Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all
27 of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the
28 Non-Exempt Class suffered actual damages as a result.

130. Defendants' failure to provide accurate itemized wage statements constitutes an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all actual damages or the amount specified in § 226 per violation.

131. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations, in an amount to be shown according to proof at trial.

132. Plaintiff seeks to recover all available remedies including, but not limited to damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code §§ 201, 202, 203)

(Alleged By Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass Against Defendants)

133. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

134. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and all wages due and owing to an employee not having a written contract for a definite period, who quits his or her employment, within 72 hours of the employee quitting his or her employment, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

135. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an action is commenced, but the wages shall not continue for more than 30 days.

136. As a result of Defendants' conduct during the applicable statutory period, Defendants

willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all wages due and owing to them, including minimum wages, overtime wages, and regular wages for all the time they were suffered or permitted to work or were engaged in work under Defendants' control owed within the time required by Labor Code §§ 201 and 202, as applicable.

137. To date, Plaintiff has not yet received all wages due and payable, including but not limited to, minimum wages, overtime wages, regular wages, and meal and rest period premium wages owing to him. On information and belief, members of the Waiting Time Penalties Subclass have not yet received all minimum wages, overtime wages, and regular wages due and owing to them.

138. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

139. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.

(Alleged By Plaintiff Individually and on Behalf of the Non-Exempt Class Against Defendants)

140. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

141. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

142. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiff and the Non-Exempt Class

1 all regular, minimum, and overtime wages for all hours suffered or permitted to work and under the control
2 of Defendant; (iv) failure to indemnify Plaintiff and the Non-Exempt Class for necessary business
3 expenses; (v) failure to maintain accurate records of the hours that Plaintiff and the Non-Exempt Class
4 worked while employed by Defendant; (vi) failure to provide Plaintiff and the Non-Exempt Class with
5 accurate itemized wage statements; and (vii) failure to timely pay Plaintiff and members of the Waiting
6 Time Penalties Subclass all wages owed upon separation of their employment with Defendants.

7 143. Defendants intentionally avoided paying Plaintiff and the Non-Exempt Class all wages
8 and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially
9 lower cost of doing business, and thus, undercut its competitors.

10 144. Defendants lowered their costs of doing business by paying Plaintiff and the Non-Exempt
11 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
12 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and Non-Exempt Class members
13 to perform work without fair compensation and benefits.

14 145. Defendants held themselves out to Plaintiff and the Non-Exempt Class as being
15 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.
16 Plaintiff and the Non-Exempt Class relied on and believed in Defendants' representation concerning
17 Defendants' adherence to the California laws, all to their detriment.

18 146. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding
19 money owed to the class and withholding wages, compensation and benefits, which are all the property
20 of Plaintiff and the Non-Exempt Class, in violation of the California Labor Code and the IWC Wage
21 Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under
22 California Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition,
23 Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

24 147. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief
25 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost
26 money or property as a result of the unfair competition."

27 148. Defendants acquired money and property owed to Plaintiff and the Non-Exempt Class by
28 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions

Code § 17200, *et seq.*

149. Plaintiff and the Non-Exempt Class are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that “any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204.”

150. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the putative classes.

151. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.”

152. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203, and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

153. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

154. Plaintiff seeks all available remedies on behalf of herself and on behalf of the Non-Exempt Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

NINTH CAUSE OF ACTION

REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE

PRIVATE ATTORNEYS GENERAL ACT (PAGA)

(Labor Code section 2698, *et seq.*)

(Alleged by Plaintiff on Behalf of the Aggrieved Employees Against All Defendants)

155. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 paragraphs above, as though fully set forth herein.

2 156. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for
3 a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
4 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered
5 through a civil action brought by an aggrieved employee on behalf of himself or herself and other current
6 or former employees pursuant to the procedures specified in Labor Code section 2699.3.

7 157. This cause of action involves allegations of violations of Labor Code sections 201, 202,
8 204, 223, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, and 2802 which, pursuant to Labor Code
9 section 2699.5, provide for civil penalties to be assessed and collected by the LWDA or recovered through
10 a civil action brought by an aggrieved employee on behalf of himself or herself and other aggrieved
11 employees pursuant to the procedures specified in Labor Code section 2699.3.

12 158. Defendants employed Plaintiff during the applicable statutory time period and Plaintiff had
13 one or more of the alleged violations committed against her. Therefore, Plaintiff is an “aggrieved
14 employee” under PAGA. As an aggrieved employee, Plaintiff is properly suited to represent the interests
15 of other current and former aggrieved employees in a PAGA representative action.

16 159. Plaintiff exhausted her obligation to provide administrative notice and now seeks penalties
17 on behalf of himself and other current and former non-exempt California employees of Defendants.

18 160. Pursuant to Labor Code section 2699(a), Plaintiff seeks civil penalties, but only those civil
19 penalties that are required to be shared with the LWDA and no individual relief or underpaid wages, on
20 behalf of herself and all other aggrieved employees.

21 161. For every violation of the Labor Code for which a civil penalty is not specifically provided,
22 Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100) for each
23 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
24 aggrieved employee per pay period for each subsequent violation.

25 162. Defendants violated Labor Code sections 223, 1194, 1197, and 1198 by not paying Plaintiff
26 and, on information and belief, other aggrieved employees at least minimum and regular wages for all the
27 time they were suffered or permitted to work, engaged in work and/or under Defendants’ control, as
28 alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of

one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of sections 223, 1194, 1197, and 1198, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

163. Defendants violated Labor Code sections 510, 1194, and 1198 by not paying Plaintiff and, on information and belief, other aggrieved employees all overtime wages earned for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. At all relevant times, Plaintiff and, on information and belief, other aggrieved employees were not paid all overtime when they worked in excess of eight hours a workday, forty hours in a workweek, or seven consecutive days in a week. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of sections 510, 1194, and 1198, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

164. Defendants violated Labor Code sections 226.7, 512, and 1198 by failing to provide Plaintiff and, on information and belief, aggrieved employees lawfully compliant meal periods and by failing to pay them meal period premium wages for each day a meal period was not provided. Under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of sections 226.7 and 1198, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

165. Defendants violated Labor Code sections 226.7 and 1198 by failing to authorize and permit Plaintiff and, on information and belief, aggrieved employees to take off-duty rest periods and by failing to pay them rest period premium wages for each day a rest period was not provided. Under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of sections 226.7 and 1198, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

166. Defendants violated Labor Code sections 201, 202, 203, 223, 510, and 1197 by not paying Plaintiff and, on information and belief, aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premium wages owed upon termination by the time set forth by law, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one

1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of sections
2 201, 202, 203, 223, 510, and 1197, and two hundred dollars (\$200) for each aggrieved employee per pay
3 period for each subsequent violation.

4 167. Defendants violated Labor Code sections 204, 223, 510, and 1197 by not paying Plaintiff
5 and, on information and belief, aggrieved employees all minimum, regular, and overtime wages owed,
6 and all meal and rest premium wages owed during her regular pay periods by the time set forth by law, as
7 alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of
8 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of Labor
9 Code sections 204, 510, and 1197, and two hundred dollars (\$200) for each aggrieved employee per pay
10 period for each subsequent violation.

11 168. Defendants violated section 204 by not paying Plaintiff and, on information and belief,
12 aggrieved employees all minimum, regular, and overtime wages owed by the time set forth by law, as
13 alleged herein. Thus, under Labor Code section 210(a), Defendants, in addition to, and entirely
14 independent from any other penalty, is subject to a civil penalty of one hundred dollars (\$100) for each
15 aggrieved employee per pay period for the initial violation of section 204, and two hundred dollars (\$200)
16 for each aggrieved employee per pay period for each subsequent violation, plus 25 percent of the amount
17 unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.

18 169. Defendants violated Labor Code section 2802 by failing to reimburse Plaintiff and, on
19 information and belief, other aggrieved employees of Defendants with necessary expenses that they
20 incurred in the discharge of their duties of employment. Thus, under Labor Code section 2699(f)(2),
21 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial
22 violation of this section, and \$200 for each aggrieved employee per pay period for each subsequent
23 violation.

24 170. Defendants violated Labor Code section 1174 by failing to maintain accurate records of
25 the hours worked by Plaintiff and, on information and belief, other aggrieved employees. Thus, under
26 Labor Code section 1174.5, Defendants are subject to a civil penalty of five hundred dollars (\$500) for
27 each violation.

28 171. Defendants violated Labor Code section 226(a) by failing to furnish employees, with each

1 wage payment, an accurate and itemized wage statement that shows gross wages earned, total hours
2 worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid,
3 the name of the employee and the portion of his or her social security number, the name and address of
4 the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee. Thus, under Labor Code
6 section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation of Labor Code section 246, and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

9 172. Defendants also violated Labor Code section 246 by failing to provide Plaintiff and, on
10 information and belief, aggrieved employees with written notice of the amount of paid sick leave available,
11 as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of
12 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of Labor
13 Code section 246, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation.

15 173. Defendants are and were Plaintiff's and aggrieved employees' employer or other person
16 acting either individually or as an officer, agent, or employee of another person(s), who pays or causes to
17 be paid to any employee a wage less than the minimum fixed by an order of the Commission, and, as such,
18 is subject to civil penalties for each underpaid employee pursuant to Labor Code section 1197.1.

19 174. Labor Code section 1197.1 imposes upon Defendants for each initial violation of Labor
20 Code section 1197 by paying or causing an employee to be paid less than the minimum wage, a civil
21 penalty of one hundred dollars (\$100) for each underpaid employee for each pay period for which the
22 employee is underpaid. Furthermore, section 1197.1 imposes upon Defendants for each subsequent
23 violation a civil penalty of two hundred and fifty dollars (\$250) for each underpaid employee for each pay
24 period for which the employee was underpaid.

25 175. Defendants are and were Plaintiff's and other aggrieved employees' employer, or person
26 acting on their behalf, within the meaning of Labor Code section 558, who violated or caused to be
27 violated, a section of Part 2, Chapter 1 of the California Labor Code, or any provision regulating hours
28 and days of work in any IWC Wage Order and, as such, is subject to civil penalties for each underpaid

1 employee as set forth in section 558.

2 176. Pursuant to section 558, Defendants are subject to a civil penalty of fifty dollars (\$50) for
3 an initial violation of Labor Code sections 510 and/or 512, for each aggrieved employee, for each pay
4 period for which the aggrieved employee was not provided with a timely uninterrupted 30-minute meal
5 period and all overtime wages for all hours worked, as alleged herein. Furthermore, Labor Code section
6 558 imposes upon Defendants for each subsequent violation of Labor Code sections 510 and/or 512 a civil
7 penalty of one hundred dollars (\$100) for each aggrieved employee for each pay period for which the
8 aggrieved employee was not provided with a timely uninterrupted 30-minute meal period and all overtime
9 wages for all hours worked, as alleged herein.

10 177. Section 558 also imposes upon Defendants for each initial violation of the Hours and Days
11 of Work section of any IWC Wage Order a civil penalty of fifty dollars (\$50) for each aggrieved employee
12 for each pay period for which the aggrieved employee was not provided with a paid uninterrupted 10-
13 minute rest period, as alleged herein. Furthermore, section 558 imposes upon Defendants for each
14 subsequent violation of the Hours and Days of Work section of any IWC Wage Order a civil penalty of
15 one hundred dollars (\$100) for each aggrieved employee for each pay period for which the aggrieved
16 employee was not provided with a paid uninterrupted 10-minute rest period, as alleged herein. As set forth
17 in *Thurman v. Bayshore Transit Management*, 203 Cal.App.4th 1112, 1153 (2012), the Hours and Days
18 of Work section of the Wage Orders also covers failure to provide rest periods and Plaintiff may therefore
19 recover civil penalties under section 558 for each such violation.

20 178. Pursuant to Labor Code section 558.1, each Defendant is an employer or other person
21 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating the
22 “Hours and Days of Work” and the “Minimum Wages” sections of the Applicable Wage Order, or who
23 violates, or causes to be violated, sections 203, 226, 226.7, 1194 or 2802 of the Labor Code, and is subject
24 to a civil penalty for each initial and/or subsequent violation. Defendants committed such violations when
25 they failed to pay all minimum, regular, and overtime wages, to provide compliant meal and rest periods
26 or pay meal and rest period premium wages, to provide accurate itemized wage statements, and to timely
27 pay all wages due, as alleged herein.

28 179. Defendants violated Labor Code section 1198 when it failed to comply with the maximum

1 hours of work and the standard conditions of labor fixed by the IWC under the “Hours and Days of Work,”
2 the “Minimum Wages,” the “Records,” the “Meal Periods,” and the “Rest Periods” Sections of the
3 applicable IWC Wage Order, by failing to pay all minimum and overtime wages, failing to provide
4 compliant meal and rest periods, failing to pay meal and rest period premium wages, and failing to keep
5 and provide accurate records, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants
6 are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period
7 for the initial violation of Labor Code section 1198 and two hundred dollars (\$200) for each aggrieved
8 employee per pay period for each subsequent violation of Labor Code section 1198.

9 180. Pursuant to Labor Code section 2699, for bringing this action, Plaintiff is additionally
10 entitled to attorney’s fees and costs incurred herein.

11 181. Plaintiff seeks to recover civil penalties, but only those civil penalties that are required to
12 be shared with the LWDA and no individual relief or underpaid wages, on behalf of himself and other
13 aggrieved employees for Defendants’ violations of the Labor Code, including but not limited to
14 Defendants’ violations of Labor Code sections 201, 202, 204, 223, 226, 226.7, 246, 510, 512, 1174, 1194,
15 1197, 1198, and 2802, pursuant to Labor Code sections 2698–99.5. The exact amount of the applicable
16 penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations
17 of this Court.

18 **WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS HEREINAFTER**

19 **REQUESTED PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 21 a. For general damages;
- 22 b. For special damages;
- 23 c. For an award of liquidated damages to the extent permissible by Labor Code §
- 24 1194.2;
- 25 d. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted by
- 26 law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5,
- 27 218.6, 226, 1194, and 2802;
- 28 e. For statutory penalties to the extent permitted by law, including those pursuant to

- the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- g. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- h. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, minimum wages, regular wages, overtime wages, vacation wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- i. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- j. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- k. For civil penalties for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages pursuant to Labor Code §§ 558 and 1197.1;
- l. For indemnification of all losses incurred as a result of employment with Defendants, with interest;
- m. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- n. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;

- 1 o. For an accounting to determine all money wrongfully obtained and held by
2 Defendants;
- 3 p. For a declaratory judgment that Defendants violated Labor Code §§ sections 201,
4 202, 204, 223, 226, 226.7, 246, 510, 512, 1174, 1197, 1198, and 2802, as well as
5 the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Reporting Time
6 Pay,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the
7 Industrial Welfare Commission;
- 8 q. For civil penalties, but only those civil penalties that are required to be shared with
9 the LWDA and no individual relief or underpaid wages, on behalf of Plaintiff and
10 other aggrieved employees for Defendants’ violations of the Labor Code, including
11 but not limited to Defendants’ violations of Labor Code sections 201, 202, 204,
12 223, 226, 226.7, 246, 510, 512, 1174, 1197, 1198, and 2802, pursuant to Labor
13 Code sections 2698–99.5; and
- 14 r. An award of such other and further relief as this Court deems proper and just.

15 **JURY TRIAL DEMAND**

16 Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

17 Dated: December 11, 2020

18 GRAHAMHOLLIS APC

19
20 By: _____

21 GRAHAM S.P. HOLLIS
22 VILMARIE CORDERO
23 DAVID LIN
24 Attorneys for Plaintiff
25
26
27
28

EXHIBIT A

July 24, 2020

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
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David Lin
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619.618.1869 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Community Research Foundation, Inc.
1202 Morena Blvd.
Suite 300
San Diego, CA 92110

Community Research Foundation, Inc.
c/o Linda Hammond, Agent for Service of Process
1202 Morena Blvd.
Suite 300
San Diego, CA 92110

Re: Tiffany Newby's Wage and Hour Claims Against Community Research Foundation, Inc.

Dear California Labor and Workforce Development Agency and Community Research Foundation, Inc.:

Please be advised that Tiffany Newby ("Claimant") has retained our firm to represent her for various claims against Community Research Foundation, Inc. (the "Company" or "CRF").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current or former non-exempt employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees in California who performed work for the Company during the relevant time period (referred to herein as the "CRF Employees"). All CRF Employees, including Claimant, are believed

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

to have suffered at least one of the wage and hour violations described herein. Claimant therefore contends that she and all other CRF Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

CRF is a company incorporated in California, which does business throughout San Diego county. CRF operates programs which provide treatment and rehabilitation of individuals with mental health and substance abuse issues. CRF employed Claimant from July 2018 to January 2020 as a Psychosocial Rehabilitation Specialist (“PRS”). As a PRS, Claimant was regularly scheduled to work between 35 and 40 hours each week, though she often worked in excess of 40 hours. Claimant’s regular duties included meeting with clients in person and on the phone to provide behavioral health services, and inputting client notes into CRF’s record-keeping system.

The Company denied and continues to deny Claimant and other aggrieved employees in California specific rights afforded to them under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Order 4 (“Applicable Wage Order”). For example, the Company failed to pay them all minimum, regular, and overtime wages owed, failed to provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums, failed to reimburse them for all business expenses, failed to maintain accurate records and issue accurate itemized wage statements, failed to provide accurate written notice of sick leave, and failed to timely pay all wages, including all wages due upon separation of employment.

CRF failed to provide Claimant and other aggrieved employees the opportunity to take compliant 30-minute, uninterrupted, off-duty meal periods before their fifth hour of work. The nature of the work did not necessitate that Claimant and other aggrieved employees stay on-duty through their meal breaks and there was no valid on-duty meal period agreement between CRF and employees. Due to the volume of work and number of client meetings that Claimant and other aggrieved employees were expected to complete each day, they were unable to take full, uninterrupted 30-minute meal breaks. Nevertheless, CRF instructed Claimant and other aggrieved employees to record timely 30-minute meal breaks in their time records. CRF likewise did not authorize or permit Claimant and other aggrieved employees with legally compliant rest breaks. Despite the fact that Claimant and other aggrieved employees did not receive off-duty meal and rest breaks, the Company did not provide any premium wages for these missed breaks, as required by law.

Claimant and other aggrieved employees were not paid all minimum, regular, and overtime wages. CRF failed to pay Claimant and other aggrieved employees for the minimum, regular, and overtime hours resulting from having to take “on-duty” meals. As described above, Claimant and other aggrieved employees were instructed to record 30-minute meal breaks on their time records even though their meal breaks were missed, short, or interrupted, and were thus not paid any wages whatsoever for the hours they worked during on-duty meal periods. CRF also instructed Claimant and other aggrieved employees to clock out at the end of their scheduled shifts even though they regularly continued working off-the-clock to complete their assignments.

Further, CRF required Claimant and other aggrieved employees to carry a “crisis pager” during on-call weekend shifts. Each time the crisis pager rang, Claimant and other aggrieved employees were obligated to answer any calls that came in, stay on the line with clients until their issues were resolved, and

prepare a report about the call. Claimant and other aggrieved employees would receive between five (5) and thirty (30) calls each weekend. However, regardless of how much time Claimant and other aggrieved employees spent responding to the crisis pager and preparing reports, CRF paid them only one hour for each weekend that they were on-call with the crisis pager. As such, the CRF failed to meet its obligations to pay Claimant and other aggrieved employees the minimum, regular, and overtime wages they were owed under California law. When it did pay overtime wages, CRF failed to pay overtime at the proper rate because it failed to include all non-discretionary bonuses and premiums into its regular rate of pay.

The Company also failed to reimburse Claimant and other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, Claimant and other aggrieved employees used their personal vehicles for work-related travel but were not properly reimbursed for all travel expenses. Claimant and other aggrieved employees also incurred work-related expenses in taking clients to coffee or meals to model proper psychosocial behavior. Moreover, Claimant and other aggrieved employees were occasionally required to use their personal cell phones to communicate with superiors, co-workers, and clients. Claimant and other aggrieved employees were not fully reimbursed for these business expenses, as required by California law.

As a direct result of the Company's illegal policies and procedures, the Company fails to maintain accurate records reflecting all of Claimant's and other aggrieved employees' time worked and wages paid, in violation of California law. In addition, the wage statements issued by the Company do not include the correct amount of gross and net wages earned, total hours worked by the employee, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee as required under Labor Code section 226. The wage statements did not include the correct number of regular and overtime hours and respective hourly rates for Claimant and other aggrieved employees when the Company failed to pay the legal minimum and overtime wages to employees as non-exempt as required by the Applicable Wage Order. Further, the wage statements do not reflect the correct number of sick hours accrued and used.

Lastly, as a direct result of the aforementioned Labor Code violations, the Company fails to timely pay Claimant and other aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal and rest period premium wages, as required pursuant to Labor Code sections 201, 202 and 204.

The Company also engaged in retaliation and wrongful constructive discharge of Claimant in violation of Labor Code sections 98.6 and 1102.5. During Claimant's employment, she made various protected complaints to CRF about the working conditions and CRF's failure to accommodate her disability resulting from an injury she suffered on the job. CRF retaliated by maintaining a hostile work environment for Claimant in which she was harassed and received disparate treatment, continually refusing to accommodate her disability and/or engage in an interactive process, and continually refusing to consider her for an internal transfer. In January 2020, after CRF had denied several of Claimant's requests for internal transfer, Claimant resigned from her position as working conditions were so intolerable that she felt compelled to resign.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded them under the Labor Code and the Applicable Wage Order. Claimant

makes these claims against the Company on behalf of herself and all other aggrieved current and former employees of the Company in California.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND
AUTHORIZE AND PERMIT REST PERIODS**
(Labor Code sections 226.7, 512, 558, 1198 and the “Meal Periods” and
“Rest Periods” sections of the Applicable Wage Order)

Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code section 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the Applicable Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.” The Applicable Wage Order further states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Rest Periods” section of the Applicable Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal breaks of at least 30-minutes before the start of their sixth hour of work and does not authorize and permit Claimant and other aggrieved employees to take legally compliant rest breaks, as required by California law. Consequently, Claimant and other aggrieved employees are entitled to receive one-hour of premium wages for each day a compliant meal break was not provided and one-hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable Wage Order)

Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1197.1 provides that, "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203..." Section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 510 states, "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" and "Minimum Wages" sections of the Applicable Wage Order mandate the same requirements.

Labor Code section 1194(a) states, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 223 states, "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Labor Code section 225.5 provides that, "...every person who unlawfully withholds wages due any employee in violation of Section ...223 shall be subject to a civil

penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, CRF failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages required by law. Claimant will pursue all available remedies for CRF’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code sections 2802 and 2804)

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

Labor Code section 2804 states, “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

As set forth above, the Company required that Claimant and other aggrieved to necessary business expenses in the discharge of their duties without providing reimbursement. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198,
and the “Records” section of the Applicable Wage Order)

Labor Code section 1174 states, “[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments.”

The “Records” section of the Applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work day, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages paid. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND
ACCURATE WRITTEN NOTICE OF SICK LEAVE**
(Labor Code sections 226, 226.3, 246, 248.5, and 1198)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 246(i) states that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Any person enforcing Labor Code section 246 on behalf of the public “shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.” Labor Code § 248.5(e).

As set forth above, the Company fails to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code while they worked as non-exempt employees. The wage statements issued did not include the accurate total regular and

overtime hours worked, the accurate hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross and net wages earned. The Company also failed to include the correct number of accrued and used sick hours on Claimant's and aggrieved employees' wage statements throughout their exempt and non-exempt employment periods. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the
"Minimum Wages" section of the Applicable Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code section 204(b)(1) states, "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." Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the Applicable Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in pertinent part, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

As set forth above, the Company violated these Labor Code sections by not paying to Claimant and other aggrieved employees all minimum, regular, and overtime wages, and meal and rest break premium wages, within the required time during their employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

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CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code pt.2, ch.1 (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Labor Code section 558.1(a) states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpays Claimant and aggrieved employees and violated the Labor Code and the Applicable Wage Order by failing to pay them all regular, minimum, and overtime wages, and meal and rest break premium wages, as required under Labor Code sections 203, 226, 226.7, 510, 512, 1194, 1197, 1198, and the applicable sections of the Applicable Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

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RETALIATION AND WRONGFUL TERMINATION

(Labor Code sections 98.6 and 1102.5)

Labor Code § 98.6(a) states, “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 11010) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.” In addition to other remedies available, an employer who violates Labor Code section 98.6 is “liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.” Labor Code § 98.6(a)(3).

Labor Code § 1102.5(b) states, “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.” In addition to other penalties, “an employer that is a corporation or limited liability Companies is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

As set forth above, the Company engaged in retaliation against Claimant and wrongfully took adverse employment action against her in violation of Labor Code §§ 98.6, 1102.5(b). By creating and maintaining an environment so hostile to Claimant that Claimant was effectively forced to resign, CRF effectively wrongfully terminated Claimant. *See Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1244 (“constructive discharge is legally regarded as a firing rather than a resignation.”) Thus, Claimant will seek all available remedies against CRF for these violations.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 248.5,
558, 1194, 1194.2, 1197.1, and 2699, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2699, *et seq.*, among others, give employees the right to recover in a civil action damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation, and 100% of the underpaid wages. Accordingly, the Company is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of herself and other aggrieved employees.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order 4-2001 and thereby deprived Claimant and other Community Research Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former non-exempt employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agencies decline to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other current or former non-exempt employees of the Company in California as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Lin', with a stylized flourish at the end.

David Lin

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Amy Bevan](#)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, July 24, 2020 3:10:45 PM

7/24/2020

LWDA Case No. LWDA-CM-799942-20
Law Firm : GrahamHollis APC
Plaintiff Name : Tiffany Newby
Employer: Community Research Foundation, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



July 28, 2020

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Shipment Details

Weight:	3.0oz
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Recipient Signature

Signature of Recipient:	<i>Mark</i>
	<i>RT1539 C19</i>
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Recipient Signature

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