

18-Jun-2021 12:39 Unknown

5108351417

p.2

FILED BY FAX

ALAMEDA COUNTY

June 18, 2021

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG20072101

1 Laura L. Ilo (SBN 173179)
lho@gbdhlegal.com
2 Raymond Wendell (SBN 298333)
rwendell@gbdhlegal.com
3 Ginger L. Grimes (SBN 307168)
ggrimes@gbdhlegal.com
4 Kristen Burzynski (SBN3314333)
kburzynski@gbdhlegal.com
5 GOLDSTEIN, BORGES, DARDARIAN & HO
155 Grand Avenue, Suite 900
6 Oakland, CA 94612
Tel: (510) 763-9800
7 Fax: (510) 835-1417

8 Attorneys for Plaintiffs

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 TAMARA RENI, ADRIAN BARNES, SARAH
13 KENDALL, CHAD LAHUE, JEREMY
14 PALMITIER, LISA SANDER, ZABOUR WEST,
and STEVEN ROBINSON, individually and on
behalf of all those similarly situated,

15 Plaintiffs,

16 vs.

17 REACH MEDICAL HOLDINGS, LLC; REACH
18 AIR MEDICAL SERVICES, LLC; CALSTAR
19 AIR MEDICAL SERVICES LLC; and DOES
ONE through TEN inclusive,

20 Defendants.

Case No.: RG20072101

CLASS ACTION

SECOND AMENDED COMPLAINT

- (1) **Failure to Pay Daily Overtime Wages;**
- (2) **Failure to Pay Overtime Wages Based on Regular Rate of Pay;**
- (3) **Failure to Pay Minimum and Regular Rate Wages;**
- (4) **Failure to Pay Reporting Time Wages;**
- (5) **Failure to Provide Meal Periods;**
- (6) **Failure to Provide Rest Periods;**
- (7) **Failure to Furnish Accurate Wage Statements;**
- (8) **Failure to Pay All Wages Owed at Separation;**
- (9) **California Unfair Competition Law; and**
- (10) **California Private Attorneys General Act.**

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

1. Plaintiffs Tamara Reni, Adrian Barnes, Sarah Kendall, Chad Lahue, Jeremy Palmitier, Lisa Sander, Zabour West, and Steven Robinson (together, “Plaintiffs”) bring this class action against Defendants REACH Medical Holdings, LLC; REACH Air Medical Services, LLC; CALSTAR Air Medical Services LLC; and other unknown entities (together, “Defendants”) on behalf of themselves and all other former and current Flight Nurses, Flight Paramedics, and Pilots (collectively, the “Flight Crewmembers”).

2. Defendants are in the business of providing air medical transport services by helicopter and other aircraft. Flight Crewmembers are dispatched from air medical transport bases, located throughout the state of California, to assist patients in need of transportation for medical services. During the air transport, Flight Nurses and Paramedics attend to patients and provide stabilizing care until the patients can get to a hospital or other emergency care. When they are not in flight, Flight Crewmembers are required to remain on base during their regular 12- or 24-hour shifts unless they are assigned to conduct a community outreach event at a local hospital, college, or fire department.

3. Plaintiffs allege that all current and former Flight Crewmembers who worked in California are entitled to: (1) unpaid daily overtime wages (Cal. Labor Code §§ 510, 1194; California Industrial Welfare Commission Wage Order 9, Cal. Code Regs. tit. 8 § 11090 (“Wage Order 9”) § 3); (2) unpaid overtime wages based on Defendant’s miscalculation of the regular rate of pay (Cal. Labor Code §§ 510, 1194; Wage Order 9 § 3); (3) unpaid minimum wages (Cal. Labor Code §§ 1182.12, 1194, 1197, 1197.1; Wage Order 9 § 4) or regular rate wages (Labor Code §§ 221-223); (4) unpaid reporting time pay (Cal. Labor Code § 1194; Wage Order 9 § 5); (5) meal and rest period premiums for missed or on-duty meal and rest breaks (Cal. Labor Code § 226.7, 512; Wage Order 9 §§ 11, 12); (6) statutory damages for Defendants’ failure to provide accurate itemized wage statements (Cal. Labor Code §§ 226, 226.3); (7) statutory penalties for Defendants’ failure to pay all wages due and owing upon termination of employment (Cal. Labor Code §§ 201–203); and (8) restitution and injunctive relief under the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

4. Plaintiffs Reni, Barnes, Kendall, Lahue, Sander, West, and Robinson also bring a representative action under the California Labor Code Private Attorneys General Act (“PAGA”), Cal.

1 Lab. Code §§2698 *et seq.* for the above Labor Code violations, as well as for Defendants' failure to
2 keep accurate payroll records of hours worked under Labor Code section 1174 and Defendant's secret
3 underpayment of Flight Crewmembers in violation of Labor Code section 223.

4 **II. THE PARTIES**

5 5. Plaintiff Tamara Reni was a Flight Nurse in California until August 2019. Plaintiff
6 Reni lives in Pleasanton, California.

7 6. Plaintiff Adrian Barnes has been a Flight Paramedic in California since July 2018.
8 Plaintiff Barnes lives in Gridley, California.

9 7. Plaintiff Sarah Kendall has been a Flight Paramedic in California since July 2012.
10 Plaintiff Kendall lives in Nevada City, California.

11 8. Plaintiff Chad Lahue has been a Flight Nurse since August 2018. Plaintiff Lahue lives
12 in Grass Valley, California.

13 9. Plaintiff Jeremy Palmitier was a Flight Paramedic in California until around October
14 2017. Plaintiff Palmitier lives in El Dorado Hills, California.

15 10. Plaintiff Lisa Sander has been a Flight Paramedic since 2012. Plaintiff Sander lives in
16 Wilton, California.

17 11. Plaintiff Zabour West was a Flight Nurse from December 2019 to October 2020.
18 Plaintiff West lives in San Francisco, California.

19 12. Plaintiff Steven Robinson has been a Pilot in California since October 2016. Plaintiff
20 Robinson lives in Carlsbad, California.

21 13. Defendant REACH Medical Holdings, LLC is an air medical transportation services
22 company incorporated in Delaware with a principal place of business in California. Defendant
23 REACH Medical Holdings, LLC owns several companies that provide air medical transport services,
24 including REACH Air Medical Services, LLC; CALSTAR Air Medical Services LLC; and CAL-ORE
25 Life Flight LLC. Defendant REACH Medical Holdings, LLC is part of Global Medical Response,
26 Inc., one of the largest air medical companies in the country.

27 14. Defendant REACH Air Medical Services, LLC is an air medical transportation services
28 company incorporated in California and headquartered in Sacramento.

15. Defendant CALSTAR Air Medical Services LLC is an air medical transportation services company incorporated in Delaware and headquartered in Sacramento.

16. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated as DOES when such identities become known.

III. VENUE

17. Venue is proper pursuant to Code of Civil Procedure Section 395(a) because Defendants have contracted to provide services and does provide such services in Alameda County. Plaintiffs have frequently flown into and out of Alameda County for their work for Defendants, including to and from Oakland Airport and the Children's Hospital Oakland.

IV. FACTUAL BACKGROUND

18. Flight Crewmembers are classified as non-exempt and paid on an hourly basis. Plaintiffs have been paid hourly rates ranging from about \$20 to \$45 for their flight duty shifts.

19. Flight Nurses and Paramedics are typically scheduled for seven 24-hour shifts for every four-week period, plus one or two 12-hour on-call shifts per four-week period.

20. Pilots are typically scheduled on a rotating schedule of seven 12-hour shifts over seven days followed by seven days off.

21. When they are not in the air, Flight Crewmembers work on base, where they must remain ready to be dispatched and perform duties including inspecting the aircrafts, cleaning and restocking the aircraft, debriefing from dispatches, charting, performing a medical crew bag check, attending base meetings, responding to inquiries on company-issued communication devices, providing security for the base, engaging in operational drills, and cleaning the crew quarters.

1 **A. Defendants Fail to Pay Daily Overtime Wages.**

2 22. Defendants’ policy is to pay Flight Nurses and Paramedics at their regular hourly rate
3 for the first forty hours Defendants recognize as worked per week, regardless of the number of hours
4 the Flight Nurses and Paramedics work in one day. Defendants do not pay Flight Nurses and
5 Paramedics daily overtime wages on their 24-hour shifts as required by California law.

6 23. Flight Nurses and Paramedics are not exempt from California’s overtime requirements
7 under Wage Order 9 § 3(K), which applies only to “ambulance drivers and attendants” – not Flight
8 Crewmembers. Defendants were aware that Wage Order 9 § 3(K) did not apply to Flight
9 Crewmembers, but nevertheless failed to pay Flight Nurses and Paramedics for daily overtime rates as
10 required by California law.¹ Flight Crewmembers are not overtime exempt under the Railway Labor
11 Act because they are not unionized. Yet, Defendants have invoked that Act as a basis for not paying
12 California overtime.

13 **B. Defendants Fail to Include All Remuneration in Calculating the Regular Rate of Pay.**

14 24. Defendants fail to accurately calculate the regular rate of pay for purposes of
15 determining overtime rates of pay for all Flight Crewmembers. Defendants fail to include all forms of
16 compensation, including preceptor pay, childcare incentive pay, medical crew lead allowance, and call-
17 in shift differential pay in calculating the regular rate of pay, thereby underpaying Flight
18 Crewmembers when Defendants did pay them for overtime hours worked.

19 **C. Defendants Fail to Pay Flight Crewmembers for Off-the-Clock Work.**

20 25. Flight Crewmembers’ work routinely last longer than their scheduled shift hours yet
21 Flight Crewmembers are told to include only their scheduled hours on their timesheets. Flight
22 Crewmembers perform shift transition duties when an incoming Flight Crew team’s shift begins and an
23 outgoing Flight Crew team’s shift ends. During the shift-change, Flight Crewmembers are responsible
24

25

26 ¹ On August 23, 2017, the Alameda County Superior Court ruled that the Wage Order 9 § 3(K)
27 exemption does not apply to air medical services workers in *Hemlick v. Air Methods Corp.*, Case No.
28 RG 13665373 (Alameda Cnty. Aug. 23, 2017). On October 10, 2017, the California Association of
Air Medical Services (“Cal-AAMS”) filed an amicus letter in support of the writ petition filed by the
Defendant in *Hemlick*. Defendants CALSTAR Air Medical Services LLC and REACH Air Medical
Services LLC are part of Cal-AAMS. The First Appellate District of the California Court of Appeal
denied the writ petition on December 22, 2017.

1 for counting and transferring narcotics, debriefing issues related to the aircraft and weather conditions,
2 and transferring equipment between the incoming and outgoing Flight Crew teams. These duties are
3 mandatory and laid out in detail in written guidelines given to Flight Crewmembers specific to their
4 positions. The incoming Flight Crewmembers are scheduled to start their shift at the same time the
5 outgoing Flight Crewmembers end their shift. Flight Crewmembers are told by their supervisors that
6 they are prohibited from counting the time spent on shift-change duties on their timesheets if the time
7 starts earlier or ends later than their scheduled shift. Defendants do not pay Flight Crewmembers for
8 the time before or after their shift hours spent on shift-change duties. Incoming Flight Crewmembers
9 must be at their assigned base before the formal start of their shift in order to take a dispatch that
10 comes in late in the preceding shift instead of the outgoing Flight Crewmembers about to end their
11 shift.

12 26. Flight Crewmembers sometimes teach classes or do other community-related events at
13 local hospitals, colleges, or fire departments outside of their regularly scheduled shifts. Sometimes
14 these events follow a Flight Crewmember's shift and sometimes they take place on a Flight
15 Crewmember's day off. Frequently, travel to these events takes longer than Flight Crewmembers'
16 regular commute from home to their home base. Defendants fail to pay Flight Crewmembers for all of
17 the time they spend traveling to and from these work-related events.

18 27. Defendants also fail to pay Flight Crewmembers for all the time spent on online
19 trainings and continuing education classes required to maintain their licenses and certifications, which
20 are sometimes completed from the Flight Crewmembers' home, as well as work-related phone calls
21 outside of their regularly scheduled shifts.

22 28. Defendants fail to track the off-the-clock hours worked by Flight Crewmembers and to
23 keep accurate records reflecting all hours Flight Crewmembers work.

24 **D. Defendants Fail to Pay Minimum, Overtime, and Reporting Wages for On-Call Time.**

25 29. Defendants require Flight Nurses and Paramedics to be on-call for at least one 12-hour
26 shift per month between 5:00 a.m. to 5:00 p.m. Defendants pay ten dollars per hour for on-call hours.²

27 _____
28 ² California's minimum wage has been higher than \$10 per hour since January 1, 2017. *See* Cal.
Lab. Code § 1182.12.

1 Defendants do not pay overtime rates for on-call hours and do not count on-call hours towards the total
2 weekly hours worked for overtime purposes. If a Flight Nurse or Paramedic is called in to duty,
3 Defendants pay a higher rate for the hours they were called in to work. Once called in, Flight Nurses
4 and Paramedics are expected to finish a 24-hour shift.

5 30. Flight Nurses and Paramedics are regularly called to duty during their on-call shifts.
6 They are expected to answer calls to come into work and begin heading for the base within 20 minutes.
7 Defendants expected Flight Nurses and Paramedics to show up on base within about an hour. Flight
8 Nurses and Paramedics cannot perform their duties remotely.

9 31. While Flight Nurses and Paramedics are allowed to switch on-call shifts, it is practically
10 difficult to switch shifts given the limited number of people who could take their shifts. Health and
11 safety restrictions on the frequency of work for Flight Nurses and Paramedics prevents anyone
12 scheduled to work the day before or the day after an on-call shift from picking up the extra shift.

13 32. While on-call, Flight Nurses and Paramedics cannot schedule personal activities, like
14 camping, hiking, or running long errands. Flight Nurses and Paramedics are limited in the activities
15 they can do during the on-call shifts because they have to remain within cell-service range to answer
16 their cell phones when Defendants call to let them know they need to report, and because they have to
17 head to their assigned base within 20 minutes of being called in to duty. Flight Nurses and Paramedics
18 are also prevented from scheduling activities the day after being on-call, because if they are called in to
19 duty, they must complete a 24-hour shift.

20 33. Under this on-call shift policy, Defendants failed to pay Flight Nurses and Paramedics
21 adequate minimum and overtime wages to Flight Nurses and Paramedics.

22 34. Defendants also failed to pay Flight Nurses and Paramedics at their regular rate for the
23 reporting time, during which Flight Nurses and Paramedics were unable to schedule any other personal
24 activities or other work.

25 **E. Defendants Do Not Provide Off-Duty Meal or Rest Periods for Flight Crewmembers.**

26 35. During Flight Crewmembers' long shifts, Defendants fail to provide meal and rest
27 periods, free from work duties, to Flight Crewmembers, even though the nature of their work does not
28 prevent Flight Crewmembers from being relieved from their duties. Defendants require that Flight

1 Crewmembers remain on duty during their meal and rest breaks, including to be able to pick up a call
2 immediately and be in the air promptly thereafter. Flight Crewmembers are expected to bring meals to
3 the base and cannot leave the base because they must always be ready to leave on a call promptly.

4 36. Defendants could have provided duty-free meal and rest periods to Flight
5 Crewmembers without causing a significant impact to prices, routes, or services. Furthermore,
6 Defendants could have provided premium wages for missed meal and rest periods to Flight
7 Crewmembers without causing a significant impact to prices, routes, or services.

8 37. Flight Crewmembers are not “emergency ambulance employees” within the meaning of
9 the Emergency Ambulance Services Act, California Labor Code §§ 880 *et seq.*

10 38. Defendants do not pay premium wages for missed or on-duty meal or rest periods.

11 39. Defendants’ rest break policy is also facially invalid because it provides one rest break
12 for every four hours worked but does not provide rest breaks for a “major fraction thereof.”

13 **F. Defendants Do Not Provide Flight Crewmembers with Accurate Itemized Wage**
14 **Statements.**

15 40. Defendants fail to provide Flight Crewmembers with wage statements that show the
16 actual hours worked, all overtime wages, gross and net wages earned, and all applicable hourly rates
17 and corresponding number of hours worked at each rate. The wage statements do not record missed
18 meal periods or premium payments. Defendants’ inadequate wage statements impede Plaintiffs’
19 ability to determine if they have been paid correctly.

20 41. Defendants also fail to provide Flight Crewmembers with the accurate name and
21 address of the legal entity that is their employer.

22 **G. Defendants Willfully Failed to Pay All Final Wages Owed to Flight Crewmembers at**
23 **the Time of Separation.**

24 42. Defendants failed to pay all compensation due and owing to Flight Crewmembers at the
25 time their employment with Defendants ended. Plaintiffs Reni and Palmitier, for example, were not
26 paid all owed minimum wages, overtime wages, meal and rest break premiums, or reporting time pay
27 in their final paychecks.

1 **H. Defendants Secretly Paid Flight Crewmembers Less Than the Contractual Rate of Pay.**

2 43. Defendants promised to pay Flight Crewmembers certain rates of pay for their overtime
3 hours, call-in shifts, and shifts that fell on holidays. Defendants frequently miscalculated Flight
4 Crewmember's hourly rates of pay, including the overtime rate, call-in differential shift rate, and
5 holiday rate, resulting in payment of less than the contractual rate of pay.

6 **V. CLASS ACTION ALLEGATIONS**

7 44. Plaintiffs seek to proceed as a class action pursuant to California Code of Civil
8 Procedure § 382 on behalf of the following class of persons:

9 All Flight Crewmembers who perform or performed services in California
10 as a Flight Nurse, Flight Paramedic, or Pilot for REACH Medical
11 Holdings, LLC; REACH Air Medical Services, LLC; and/or CALSTAR
Air Medical Services LLC at any time on or after August 21, 2016.

12 45. The putative class is so numerous that joinder of all members is impracticable.
13 Although the precise number of such persons is unknown, and the facts on which the calculation of
14 that number would be based are within the sole custody and/or control of Defendants, upon
15 information and belief, Defendants have employed over forty Flight Crewmembers in California
16 within the last four years. More than two-thirds of the putative class members are citizens of
17 California.

18 46. Among the proposed class, there is a well-defined community of interest in the
19 questions of law and/or fact involved. Those common questions include, but are not limited to:

20 a. Whether Flight Crewmembers were exempt from the overtime requirements in
21 Wage Order 9 under Section 3(K);

22 b. Whether Defendants correctly calculated Flight Crewmembers' regular rate of
23 pay for overtime purposes;

24 c. Whether Flight Crewmembers were exempt from California overtime under the
25 Railway Labor Act;

26 d. Whether Defendants were required to pay Flight Crewmembers for off-the-clock
27 work;

1 e. Whether Defendants were required to pay Flight Crewmembers minimum and
2 overtime wages for on-call time;

3 f. Whether Defendants were required to provide off-duty meal and rest breaks to
4 Flight Crewmembers or pay them premium wages for missed meal and rest breaks;

5 g. Whether Flight Crewmembers' meal and rest break claims are preempted by the
6 Airline Deregulation Act, 49 U.S.C. § 41713(b)(1);

7 h. Whether Defendants were required to issue Class Members wage statements
8 with certain required information; and

9 i. Whether Defendants' Labor Code and Wage Order violations serve as predicate
10 violations of the UCL.

11 47. Common questions of law and/or fact predominate over questions that affect only
12 individual Class Members. Plaintiffs' claims are typical of those belonging to members of the Class,
13 and Plaintiffs and their counsel can adequately represent the Class.

14 **FIRST CAUSE OF ACTION**
15 **Failure to Pay Daily Overtime Wages**
16 **[Cal. Labor Code §§ 510, 1194; Wage Order 9]**

17 48. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
18 reference the allegations contained in the paragraphs above as if fully set forth here.

19 49. California Labor Code § 510 and Wage Order 9 entitle employees to overtime
20 premiums for hours worked in excess of eight (8) in a given day, forty (40) in a given workweek, or on
21 the seventh day worked in a single workweek. Section 510 and Wage Order 9 also entitle employees
22 twice the regular rate of pay for hours in excess of twelve (12) in one day. All hours must be paid at
23 the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage
24 obligation.

25 50. Plaintiffs and Class Members worked in excess of eight hours per day and in excess of
26 forty hours per week, including during their regularly scheduled shifts, off-the-clock work, and on-call
27 time. Defendants unlawfully failed to pay Plaintiffs and Class Members proper overtime
28 compensation for all hours worked.

1 51. As a result of these violations, Defendants are liable for unpaid overtime wages,
2 interest, and attorneys' fees and costs, as well as further relief as described below.

3 **SECOND CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages Based on Regular Rate Miscalculation**
5 **[Cal. Labor Code §§ 510, 1194; Wage Order 9]**

6 52. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
7 reference the allegations contained in the paragraphs above as if fully set forth here.

8 53. California Labor Code § 510 and Wage Order 9 entitle employees to overtime wages
9 for hours worked in excess of eight (8) in a given day, forty (40) in a given workweek, or on the
10 seventh day worked in a single workweek at a rate of one and one-half times the regular rate of pay for
11 the employee. Section 510 and Wage Order 9 also entitle employees two times the regular rate of pay
12 for hours worked in excess of twelve (12) in one day. All hours must be paid at the statutory or agreed
13 rate and no part of this rate may be used as a credit against a minimum wage obligation.

14 54. Defendants failed to include all remuneration paid to Class Members when calculating
15 the regular rate of pay, including preceptor pay, childcare incentive pay, medical crew lead allowance,
16 and call-in shift differential pay. Defendants therefore underpaid Class Members' overtime wages.

17 55. As a result of these violations, Defendants are liable for unpaid overtime wages,
18 interest, and attorneys' fees and costs, as well as further relief as described below.

19 **THIRD CAUSE OF ACTION**

20 **Minimum Wage and Regular Rate Violations**
21 **[Cal. Labor Code §§ 221, 222, 223, 1182.12, 1194, 1194.2, 1197,**
22 **Wage Order 9; Minimum Wage Order]**

23 56. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
24 reference the allegations contained in the paragraphs above as if fully set forth here.

25 57. Labor Code sections 221, 222, and 223 prohibit employers from underpaying wages
26 established by contract.

27 58. California Labor Code §§ 1194, 1197, Wage Order 9 and the Minimum Wage Order
28 entitle employees to an amount equal to or greater than the minimum wage for all hours worked.

 59. For all hours worked, employers are entitled to the greater of the: (1) amount
guaranteed by contract for the specified period, or (2) the amount guaranteed by the minimum wage.

1 60. Defendants failed to pay Plaintiffs and Class Members the greater of the minimum
2 wage or regular rate for their off-the-clock work and on-call time.

3 61. As a result of Defendants' failure to pay Plaintiffs and Class Members for all hours
4 worked, Plaintiffs and Class Members are entitled to recover the unpaid balance of the full amount of
5 the minimum wage for all hours worked, plus interest, liquidated damages, and attorney's fees and
6 costs, as well as further relief as described below.

7 **FOURTH CAUSE OF ACTION**
8 **Failure to Pay Reporting Time Wages**
9 **[Cal. Labor Code § 1194; Wage Order 9]**

10 62. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
reference the allegations contained in the paragraphs above as if fully set forth here.

11 63. Wage Order 9 § 5 requires employers to pay for reporting time during which "an
12 employee is required to report for work and does report, but is not put to work or is furnished less than
13 half said employee's usual or scheduled day's work." Employees must be paid no less than two hours
14 and no more than four hours at the employee's regular rate of pay, which cannot be less than the
15 minimum wage.

16 64. Plaintiffs' and Class Members' on-call time should be counted and paid as hours
17 worked, or in the alternative as reporting time. Defendants' failed to pay Plaintiffs and Class Members
18 their regular rate of pay for their reporting time.

19 65. As a result of Defendants' failure to Plaintiffs and Class Members the legal minimum
20 wage, Plaintiffs and Class Members are entitled to recover the unpaid balance of the full amount of the
21 minimum wage and/or regular hourly rate for all hours worked, plus interest, liquidated damages, and
22 attorney's fees and costs, as well as further relief as described below.

23 **FIFTH CAUSE OF ACTION**
24 **Failure to Provide Meal Periods**
25 **[Cal. Labor Code §§ 226.7, 512, and 1194; Wage Order 9]**

26 66. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
reference the allegations contained in the paragraphs above as if fully set forth here.

27 67. California Labor Code § 512(a) states in pertinent part, "[A]n employer may not employ
28 an employee for a work period of more than five hours per day without providing the employee with a

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

4 68. Wage Order 9 states, in relevant part, “No employer shall employ any person for a work
5 period of more than five (5) hours without a meal period of not less than 30 minutes.” If no meal
6 period is provided, the Wage Orders require the employer to “pay the employee one (1) hour of pay at
7 the employee’s regular rate of compensation for each workday that the meal period is not provided.”

8 69. California Labor Code § 226.7 states, in relevant part, “An employer shall not require
9 an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission.” Section 226.7 requires an
11 employer to pay one additional hour of pay at the employee’s regular rate if the meal period is not
12 provided.

13 70. Defendants failed to provide off-duty meal periods to Plaintiffs and Class Members and
14 failed to pay premium pay for each missed meal period as required by California Labor Code §§ 226.7
15 and 512, and Wage Order 9.

16 71. As a result of Defendants’ willful and unlawful failure to provide meal periods to
17 Plaintiffs and Class Members and Defendants’ failure to pay an hour of premium pay for each missed
18 meal period, Plaintiffs and Class Members are entitled to recover one hour of pay at their regular rate
19 of compensation for each workday that a meal period was not provided, plus interest, attorney’s fees
20 and costs, as well as further relief as described below.

21 **SIXTH CAUSE OF ACTION**
22 **Failure to Provide Rest Periods**
23 **[Cal. Labor Code §§ 226.7 and 1194; Wage Order 9]**

24 72. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
25 reference the allegations contained in the paragraphs above as if fully set forth here.

26 73. California Labor Code § 226.7 states, in relevant part: “An employer shall not require
27 an employee to work during a ... rest ... period,” and if “an employer fails to provide an employee a
28 rest period ... the employer shall pay the employee one additional hour of pay at the employee’s

1 regular rate of compensation for each workday that the meal or rest or recovery period is not
2 provided.”

3 74. Wage Order 9 states, “Every employer shall authorize and permit all employees to take
4 rest periods, which insofar as practicable shall be in the middle of each work period. The authorized
5 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
6 time per four (4) hours or major fraction thereof.” The Wage Orders require an employer to “pay the
7 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the
8 rest period is not provided.”

9 75. Defendants failed to provide off-duty rest periods to Plaintiffs and Class Members and
10 failed to pay premium wages at the regular rate for each day a rest period was not provided for missed
11 rest periods.

12 76. As a result of Defendants’ willful and unlawful failure to provide rest periods to
13 Plaintiffs and Class Members and Defendants’ failure to pay an hour of premium pay at the regular
14 rate for each day a rest period was not provided, Plaintiffs and Class Members are entitled to recover
15 one hour of pay at their regular rate of compensation for each workday that a rest period was not
16 provided, plus interest, attorney’s fees, and costs, as well as further relief as described below

17 **SEVENTH CAUSE OF ACTION**

18 **Failure to Provide Accurate Itemized Wage Statements**
19 **[Cal. Labor Code §§ 226 and 226.3]**

20 77. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
21 reference the allegations contained in the paragraphs above as if fully set forth here.

22 78. California Labor Code § 226 provides, in relevant part, that every employer must
23 furnish each employee with an itemized wage statement at the time of each payment of wages showing
24 the total numbers of hours worked each pay period, gross wages, net wages, all deductions, all
25 applicable hourly rates of pay, the dates of the period for which the employee is paid, the name of the
26 employee and the last four digits of their social security number or employee identification number,
27 and the name and address of the legal entity that is the employer.

28 79. Defendant knowingly and intentionally failed to furnish Plaintiffs and Class Members
accurate itemized wage statements.

1 80. During all relevant times, Plaintiffs and Class Members were injured by these failures
2 because, among other things, they were confused about whether they were paid properly and/or they
3 were misinformed about how many total hours they worked in each pay period and whether the rates
4 listed on their wage statements were correct, as well as the identity and address of the true legal entity
5 that was their employer.

6 81. California Labor Code § 226(e)(1) provides that an employee suffering injury as a result
7 of a knowing and intentional failure by an employer to provide accurate itemized wage statements is
8 entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial
9 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
10 (\$4,000). Pursuant to California Labor Code § 226(h), Plaintiffs and Class Members are entitled to
11 injunctive relief to ensure Defendant's compliance with California Labor Code § 226.

12 82. Plaintiffs and Class Members are entitled to an award of costs and reasonable attorneys'
13 fees under California Labor Code § 226(h), as well as further relief as described below.

14 **EIGHTH CAUSE OF ACTION**
15 **Failure to Pay All Wages Owed Upon Termination**
16 **[Cal. Labor Code §§ 201–203]**

17 83. Plaintiffs Reni, Palmitier, and West, on behalf of themselves and all Class Members, re-
18 allege and incorporate by reference the allegations contained in the paragraphs above as if fully set
19 forth here.

20 84. California Labor Code § 201 provides, in relevant part, that if an employer discharges
21 an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

22 85. California Labor Code § 202 provides, in relevant part, that if an employee not having a
23 written contract for a definite period quits their employment, the employee's wages shall become due
24 and payable not later than 72 hours thereafter, unless the employee has 72 hours previous notice of his
25 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
26 quitting.

27 86. California Labor Code § 203 provides, in relevant part, that if an employer willfully
28 fails to pay, without abatement or reduction, in accordance with Sections 201 and 202 any wages of an
employee who is discharged or who quits, the wages of the employee shall continue as a penalty from

1 the due date thereof at the same rate until paid or until an action is commenced for up to thirty (30)
2 days.

3 87. As a result of Defendant's Labor Code violations alleged above, Defendant regularly
4 failed to pay Plaintiffs and Class Members all wages owed in their final paychecks pursuant to Labor
5 Code §§ 201 and 202 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

6 88. The conduct of Defendants as described herein was willfully done in violation of the
7 rights of Plaintiffs and Class Members.

8 89. Defendant's willful failure to provide Plaintiffs and Class Members the wages due and
9 owing them upon separation from employment results in a continuation of wages up to thirty (30) days
10 from the time the wages were due. Therefore, Plaintiffs and the Class Members who have separated
11 from employment are entitled to compensation pursuant to Labor Code § 203, as well as further relief
12 as described below.

13 **NINTH CAUSE OF ACTION**
14 **Unfair Competition Law Violations**
15 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

16 90. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by
17 reference the allegations contained in the paragraphs above as if fully set forth here.

18 91. California Business & Professions Code §§ 17200 *et seq.* prohibits unfair competition
19 in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

20 92. Plaintiffs bring this cause of action individually and representative of all others subject
21 to Defendant's unlawful acts and practices.

22 93. In the four years prior to the filing of the original Complaint, Defendants have
23 committed unlawful, unfair, deceptive, and/or fraudulent acts as defined by California Business &
24 Professions Code § 17200. Defendants' unlawful, unfair, deceptive, and/or fraudulent business
25 practices include, without limitation, failing to pay the minimum wage, failing to pay overtime wages,
26 failing to provide mandated off-duty meal and rest periods, failing to furnish accurate itemized wage
statements, and failing to pay all wages owed upon separation from the company.

27 94. As a result of these unlawful, unfair, and/or fraudulent business practices, Defendants
28 reaped unfair benefits and illegal profits at the expense of Plaintiffs and Class Members.

1 **TENTH CAUSE OF ACTION**

2 **Violation of the Labor Code Private Attorney General Act of 2004 (“PAGA”)**
3 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

4 95. Plaintiffs Reni, Barnes, Kendall, Lahue, Sander, West, and Robinson, on behalf of
5 themselves and all aggrieved employees, re-allege and incorporate by reference the allegations
6 contained in the paragraphs above as if fully set forth here.

7 96. Plaintiffs Reni, Barnes, Kendall, Lahue, Sander, West, and Robinson are “aggrieved
8 employees” under PAGA, as they were employed by Defendants during the applicable statutory period
9 and suffered one or more Labor Code violations.

10 97. Plaintiffs Reni, Barnes, Kendall, Lahue, Sander, West, and Robinson seek to recover
11 PAGA civil penalties through a representative action as permitted by PAGA and the California
12 Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (Cal. Ct. App. 2009). Class certification of
13 the PAGA claims is not required, but Plaintiffs may seek certification of the PAGA claims.

14 98. Plaintiffs Reni, Barnes, Kendall, Lahue, Sander, West, and Robinson seek to pursue
15 remedies pursuant to PAGA for the following violations:

16 a. For Defendants’ willful failure to pay Flight Crewmembers the applicable
17 minimum wage for all hours worked, California Labor Code § 1197.1 imposes a civil penalty of one
18 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
19 underpaid and two hundred fifty dollars (\$250) for each subsequent violation per each underpaid
20 employee for each pay period for which the employee is underpaid. Labor Code § 558 also imposes a
21 civil penalty of fifty dollars (\$50) for initial violations and one hundred dollars (\$100) for subsequent
22 violations of Wage Order 9 § 4.

23 b. For Defendants’ willful failure to pay Flight Crewmembers overtime rates for
24 daily overtime, off-the-clock work, and/or on-call time, Labor Code § 558 imposes a civil penalty of
25 fifty dollars (\$50) for initial violations and one hundred dollars (\$100) for subsequent violations of any
26 provision regulating hours and days of work.

27 c. For Defendant’s failure to pay Flight Crewmembers the correct overtime rate
28 because it miscalculated the regular rate of pay, Labor Code § 558 imposes a civil penalty of fifty
dollars (\$50) for initial violations and one hundred dollars (\$100) for subsequent violations of any

1 provision regulating hours and days of work.

2 d. For Defendants' knowing and intentional failure to provide accurate wage
3 statements, California Labor Code § 226.3 imposes a civil penalty of two hundred fifty dollars (\$250)
4 for initial violations of Labor Code § 226(a), and one thousand dollars (\$1,000) per aggrieved
5 employee for each subsequent violation.

6 e. For Defendants' failure to provide meal periods under Labor Code § 512 and
7 Wage Order 9 § 11, Labor Code § 558 imposes a civil penalty of fifty dollars (\$50) for initial
8 violations and one hundred dollars (\$100) for subsequent violations. For Defendants' failure to pay
9 premiums for meal period violations under Labor Code § 226.7, Labor Code § 2699 imposes a civil
10 penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation,
11 and two hundred dollars (\$200) for each subsequent pay period for each aggrieved employee.

12 f. For Defendants' failure to provide rest breaks under Wage Order 9 § 12, Labor
13 Code § 558 imposes a civil penalty of fifty dollars (\$50) for initial violations and one hundred dollars
14 (\$100) for subsequent violations. For Defendants' failure to pay premiums for rest break violations
15 under Labor Code § 226.7, Labor Code § 2699 imposes a civil penalty of one hundred dollars (\$100)
16 per pay period, per aggrieved employee for the initial violation, and two hundred dollars (\$200) for
17 each subsequent pay period for each aggrieved employee.

18 g. For Defendants' willful failure to pay all wages to an employee who is
19 discharged or quits, Labor Code § 256 imposes a civil penalty in an amount not exceeding thirty (30)
20 days' pay.

21 h. For Defendants' willful failure to keep accurate records as required by
22 California Labor Code § 1174(d), including records of Flight Crewmembers regular hours worked,
23 overtime hours, and meal periods, Defendants are subject to a civil penalty of five hundred dollars
24 (\$500) under Labor Code § 1174.5.

25 i. For Defendants' failure to pay reporting time wages, Labor Code § 558 imposes
26 a penalty of fifty dollars (\$50) for initial violations and one hundred dollars (\$100) for subsequent
27 violations of Wage Order 9 § 5.

1 j. For Defendant's secret underpayment of contractual wages under Labor Code §
2 223, Labor Code § 225.5 imposes a penalty of one hundred dollars (\$100) for initial violations and two
3 hundred dollars (\$200) plus twenty-five percent (25%) of the amount unlawfully withheld for
4 subsequent violations.

5 99. On August 7, 2020, Plaintiff Reni submitted a claim notice with the California Labor
6 and Workforce Development Agency ("LWDA"), Case Number LWDA-CM-801810-20, a copy of
7 which was sent via certified mail to Defendants. On August 21, 2020, Plaintiffs Barnes, Kendall, and
8 Lahue supplemented Plaintiff Reni's notice and joined Plaintiff Reni in her pursuit of civil penalties
9 under PAGA, a copy of which was sent via certified mail to Defendants. On April 13, 2021, Plaintiffs
10 Sander, West, and Robinson joined and supplemented the PAGA notice, and sent a copy via certified
11 mail to Defendants. As of today's date, the LWDA has provided no notice to Plaintiffs regarding its
12 intention to investigate or not investigate Plaintiffs' claims.

13 100. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
14 payment of wages is a fundamental public interest. Plaintiffs' successful enforcement of important
15 rights affecting the public interest will confer a significant benefit upon the general public. Private
16 enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiffs are
17 incurring a financial burden in pursuing this action, and it would be against the interests of justice to
18 require the payment of attorneys' fees and costs from any recovery obtained.

19 101. As a result of the violations alleged, Plaintiffs Reni, Barnes, Kendall, Lahue, Sander,
20 West, and Robinson, on behalf of themselves and other aggrieved employees, seek all civil penalties
21 available pursuant to California Labor Code § 2699, including all civil penalties, attorneys' fees,
22 expenses, and costs of suit.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief against
25 Defendant as follows:

26 A. Certify this action as a class action pursuant to California Code of Civil Procedure §
27 382 for Class Members, and appoint Plaintiffs as Class Representatives and their attorneys as Class
28 Counsel;

- 1 B. Direct class notice to all Class Members;
- 2 C. Award minimum, reporting time, and/or regular hourly wages and liquidated damages
- 3 to Plaintiffs and Class Members;
- 4 D. Award overtime wages to Plaintiffs and Class Members;
- 5 E. Award compensation for Defendants' failure to provide meal periods and rest periods;
- 6 F. Award statutory penalties for Defendants' failure to provide accurate itemized wage
- 7 statements;
- 8 G. Award waiting time penalties for Defendants' failure to pay all wages owed upon
- 9 termination;
- 10 H. Award civil penalties;
- 11 I. Award pre-judgment and post-judgment interest;
- 12 J. Order Defendants to make restitution to Plaintiffs and other Class Members due to their
- 13 unlawful and/or unfair business practices, including interest;
- 14 K. Enjoin Defendants from violating California law;
- 15 L. Award costs and expenses of this action;
- 16 M. Award reasonable attorneys' fees; and
- 17 N. Award such other relief as this Court deems just and proper.

18 **JURY TRIAL DEMANDED**

19 Plaintiffs demand a trial by jury on claims so triable.

20

21 Dated: June 18, 2021

Respectfully submitted,

22 

23 _____
24 Laura L. Ho

25 *Attorneys for Plaintiffs and the Putative Class*

26

27

28

1 **PROOF OF SERVICE**

2 Case: *Tamara Reni, et al. v. Reach Medical Holdings, LLC, et al.*

3 Case No.: RG 20072101

4 STATE OF CALIFORNIA)
5) SS
6 COUNTY OF ALAMEDA)

7 I have an office in the county aforesaid. I am over the age of eighteen years and not a party to
8 the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, California
9 94612.

10 I declare that on the date hereof I served a copy of

11 **SECOND AMENDED COMPLAINT**

12 SEE ATTACHED LIST, BELOW

13 ☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept
14 electronic service, I caused the documents to be sent to the persons at the electronic service
15 address(es) as set forth below.

16 ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed at Oakland, California on June 18, 2021

19 Damon Valdez

20 Printed Name

21 

22 Signature

SERVICE LIST

Kelsey A. Israel-Trummel
kitrummel@jonesday.com

Stephanie Garrett

sgarrett@jonesday.com

James E. Gorton

jgorton@jonesday.com

Jeannie F. Jew

jjew@jonesday.com

JONES DAY

555 California Street 26th Floor

San Francisco, CA 94104

Amanda C. Sommerfeld

asommerfeld@jonesday.com

Mina J. Saffarian

msaffarian@jonesday.com

JONES DAY

555 S. Flower Street, 50th Floor

Los Angeles, CA 90071-2300