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County of Yolo,
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO**

IGNACIO PEREZ, and LISZANDRA
PADILLA, individually, and on behalf of
other members of the general public
similarly situated; and KAREN RIOS,
individually, and on behalf of other
members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiffs,

vs.

COMMUNICARE HEALTH CENTERS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CV19-469

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.
- (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs IGNACIO PEREZ (“Plaintiff PEREZ”) individually, and on behalf of other members of the general public similarly situated, and LISZANDRA PADILLA (“Plaintiff PADILLA”) individually, and on behalf of other members of the general public similarly situated, and Plaintiff KAREN RIOS (“Plaintiff RIOS”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”) (together, Plaintiff PEREZ, Plaintiff PADILLA, and Plaintiff RIOS are referred to as “Plaintiffs”), and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Yolo. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Yolo. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Yolo.

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PARTIES

5. Plaintiff IGNACIO PEREZ is an individual residing in the State of California.

6. Plaintiff KAREN RIOS is an individual residing in the State of California.

7. Plaintiff LISZANDRA PADILLA is an individual residing in the State of California.

8. Defendant COMMUNICARE HEALTH CENTERS, at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Yolo.

9. At all relevant times, Defendant COMMUNICARE HEALTH CENTERS was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

10. At all times herein relevant, Defendants COMMUNICARE HEALTH CENTERS, and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

11. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

12. Defendant COMMUNICARE HEALTH CENTERS and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

13. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendant employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

15. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from March 7, 2015 through final judgment.

16. Plaintiffs reserve the right to establish subclasses as appropriate.

17. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records to determine the identities of those who work, or worked, for Defendant during the covered period in the State of California as hourly-paid or non-exempt employees. During the relevant time period, Defendant has operated multiple locations in California where it has employed hourly-paid, non-exempt employees.

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- 1 b. Typicality: Plaintiffs’ claims are typical of all other class members’ as
2 demonstrated herein. Plaintiffs were employed by Defendant as hourly-
3 paid, non-exempt employees during the covered period, and Plaintiffs’
4 claims arise from the same course of conduct by Defendant that gives
5 rise to the class claims. Plaintiffs will fairly and adequately protect the
6 interests of the other class members with whom they have a well-defined
7 community of interest.
- 8 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
9 each class member, with whom they have a well-defined community of
10 interest and typicality of claims, as demonstrated herein. Plaintiffs have
11 no interests that are antagonistic to the other class members. Plaintiffs’
12 interests are co-extensive with those of the putative class, as Plaintiffs
13 were employed by Defendant in California as hourly-paid or non-exempt
14 employees. Plaintiffs have demonstrated their ability to advocate for the
15 interests of the class thus far by Plaintiffs PEREZ and RIOS initiating
16 this litigation, and by all Plaintiffs discussing the facts of the case with
17 counsel, providing counsel with information upon request, and reviewing
18 legal documents. Plaintiffs’ attorneys, the proposed class counsel, are
19 versed in the rules governing class action discovery, certification, and
20 settlement. Plaintiffs have incurred, and during the pendency of this
21 action will continue to incur, costs and attorneys’ fees, that have been,
22 are, and will be necessarily expended for the prosecution of this action
23 for the substantial benefit of each class member.
- 24 d. Superiority: A class action is superior to other available methods for the
25 fair and efficient adjudication of this litigation because individual joinder
26 of all class members is impractical. There are numerous common issues
27 of fact and law that will predominate, and proceeding as a class action
28 will substantially benefit the Court, parties, and the class members

1 because it will provide a superior method of dealing with the common
2 questions of law and fact that exist in this case. Proceeding by way of a
3 class action will further judicial economy by avoiding repetitious
4 individual lawsuits and will unify what would otherwise be a series of
5 smaller claims so as to enhance the class members' access to redress.
6 Proceeding as a class action will also reduce risk of retaliation against
7 class members who are current employees of Defendants.

- 8 e. Public Policy Considerations: Certification of this lawsuit as a class
9 action will advance public policy objectives. Employers of this great
10 state violate employment and labor laws every day. Current employees
11 are often afraid to assert their rights out of fear of direct or indirect
12 retaliation. However, class actions provide the class members who are
13 not named in the complaint anonymity that allows for the vindication of
14 their rights.

15 18. There are common questions of law and fact as to the class members that
16 predominate over questions affecting only individual members. The following common
17 questions of law or fact, among others, exist as to the members of the class:

- 18 a. Whether Defendants' failure to pay wages, without abatement or
19 reduction, in accordance with the California Labor Code, was willful;
20 b. Whether Defendants had a corporate policy and practice of failing to pay
21 their hourly-paid or non-exempt employees within the State of California
22 for all hours worked and missed (short, late, interrupted, and/or missed
23 altogether) meal periods and rest breaks in violation of California law;
24 c. Whether Defendants required Plaintiffs and the other class members to
25 work over eight (8) hours per day, over forty (40) hours per week, and/or
26 over six (6) consecutive days per workweek and failed to pay the legally
27 required overtime compensation to Plaintiffs and the other class
28 members;

- 1 d. Whether Defendants failed to use earned commissions/non-discretionary
2 bonuses/non-discretionary monetary and non-monetary incentives/non-
3 discretionary production and/or performance pay/shift differentials to
4 calculate the regular rate of pay used to calculate the overtime rate for
5 the payment of overtime wages where Plaintiffs and the other class
6 members earned commissions/non-discretionary bonuses/non-
7 discretionary monetary and non-monetary incentives/non-discretionary
8 production and/or performance pay/shift differentials and overtime
9 wages in the same workweek;
- 10 e. Whether Defendants' policy and practice of requiring preapproval for
11 overtime pressured and required Plaintiffs and the other class members
12 to work off-the-clock and resulted in systematic underpayment of
13 overtime compensation earned;
- 14 f. Whether Defendants' policy and practice of expecting Plaintiffs and the
15 other class members to record their scheduled hours, rather than their
16 actual hours worked, pressured and required Plaintiffs and the other class
17 members to work off-the-clock and resulted in systematic underpayment
18 of overtime compensation earned;
- 19 g. Whether systemic understaffing and unrealistic heavy workload
20 pressured and required Plaintiffs and the other class members to work
21 off-the-clock and resulted in systematic underpayment of overtime
22 compensation earned;
- 23 h. Whether Defendants' policy and practice of rounding recorded punch
24 times systematically failed to compensate Plaintiffs and the other class
25 members for all the time that they worked and consistently and
26 disproportionately favored Defendants over Plaintiffs and the other class
27 members;

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- i. Whether Defendants deprived Plaintiffs and the other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- j. Whether Defendants' policies and practices of requiring preapproval for overtime, expecting Plaintiffs and the other class members to record their scheduled hours, rather than their actual hours, and systemic understaffing and unrealistic heavy workload pressured and required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- k. Whether Defendants failed to relinquish all control over Plaintiffs' and the other class members' rest periods by requiring them to remain on premises during rest periods;
- l. Whether Defendants had a corporate policy and practice during the relevant time period of not paying their hourly-paid or non-exempt employees within the State of California an additional hour of pay at their regular rate of pay when a meal period was short, late, interrupted, and/or missed;
- m. Whether Defendants had a corporate policy and practice during the relevant time period of not paying their hourly-paid or non-exempt employees within the State of California an additional hour of pay at their regular rate of pay when a rest period was short, late, interrupted, and/or missed;
- n. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked, including work required to be performed off-the-clock;
- o. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation, including earned, but unpaid, overtime and minimum wages

1 and meal and rest period premiums;

2 p. Whether Defendants failed to timely pay all wages due to Plaintiffs and
3 the other class members during their employment, including earned, but
4 unpaid, overtime and minimum wages and meal and rest period
5 premiums;

6 q. Whether Defendants complied with wage reporting as required by the
7 California Labor Code; including, *inter alia*, section 226;

8 r. Whether Defendants failed to reimburse Plaintiffs and the other class
9 members for necessary business-related expenses and costs;

10 s. Whether Defendants' conduct was willful or reckless;

11 t. Whether Defendants engaged in unfair business practices in violation of
12 California Business & Professions Code section 17200, et seq.;

13 u. The appropriate amount of damages and restitution resulting from
14 Defendants' violation of California law; and

15 v. Whether Plaintiffs and the other class members are entitled to
16 compensatory damages pursuant to the California Labor Code.

17 **PAGA ALLEGATIONS**

18 19. At all times herein set forth, PAGA was applicable to Plaintiff RIOS's
19 employment by Defendants.

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

25 21. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
26 employee," who is any person who was employed by the alleged violator and against whom
27 one or more of the alleged violations was committed.

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22. Plaintiff RIOS was employed by Defendants and the alleged violations were committed against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff RIOS and the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

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

- a. The aggrieved employee shall give written notice by online submission (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On September 28, 2020, Plaintiff RIOS provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff RIOS did not receive an LWDA Notice within sixty-five (65) days of the date of the submission of Plaintiff RIOS’s notice.

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25. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and applicable Industrial Welfare Commission Wage Orders have been satisfied.

GENERAL ALLEGATIONS

26. At all relevant times set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California who earned shift differentials/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate..

27. Defendants, jointly and severally, employed Plaintiff PEREZ as an hourly-paid, non-exempt employee from approximately April 2016 to approximately August 2016, in the State of California, County of Yolo. Plaintiff PEREZ was employed as an hourly-paid “Patient Services Representative” in the Davis Community Clinic at the rate of \$12.00 an hour. As a Patient Services Representative, Plaintiff PEREZ’s job duties included, but were not limited to, providing customer services, registering patients, reviewing records, determining insurance eligibility, communicating with government agencies and insurers to confirm patients’ insurance eligibility, scheduling appointments, answering business-related calls and messages, traveling between clinic locations for business-related purposes, being on-call, and assisting with administrative work.

28. Defendants, jointly and severally, employed Plaintiff RIOS as an hourly-paid, non-exempt employee from approximately January 2016 to approximately December 2019, in the State of California, County of Yolo.

29. Defendants, jointly and severally, employed Plaintiff PADILLA as an hourly-paid, non-exempt employee from approximately July 2015 to approximately April 2019, in the State of California, County of Yolo.

1 30. Defendants hired Plaintiffs and the other class members, classified them as
2 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked,
3 including minimum, regular and overtime wages, and failed to compensate them for short, late,
4 interrupted, and/or missed meal periods and/or rest breaks.

5 31. Defendants had the authority to hire and terminate Plaintiffs and the other class
6 members, to set work rules and conditions governing Plaintiffs' and the other class members'
7 employment, and to supervise their daily employment activities.

8 32. Defendants exercised sufficient authority over the terms and conditions of
9 Plaintiffs' and the other class members' employment for them to be joint employers of
10 Plaintiffs and the other class members.

11 33. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
12 class members.

13 34. Defendants continue to employ hourly-paid or non-exempt employees within the
14 State of California.

15 35. Plaintiffs and the other class members worked over eight (8) hours in a day,
16 forty (40) hours in a week, and/or over six (6) consecutive days per workweek during their
17 employment with Defendants.

18 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
20 employees within the State of California. This pattern and practice involved, *inter alia*, failing
21 to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or
22 missed meal periods and rest breaks in violation of California law.

23 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and the other class members were entitled to receive
25 certain wages for overtime compensation and that they were not receiving accurate overtime
26 compensation for all overtime hours worked. Defendants' failure includes, *inter alia*, failing to
27 compensate Plaintiffs and the other class members for job duties performed off-the-clock,
28 including but not limited to, providing customer service, making and receiving business phone

1 calls, reading and responding to e-mails, storing and retrieving personal belongings,
2 communicating with government agencies and insurers to confirm patients' insurance
3 eligibility, completing paperwork, registering patients, and scheduling appointments.
4 Defendants pressured and required Plaintiffs and the other class members to perform daily job
5 duties off-the-clock before their scheduled shift, after their scheduled shift, and during meal
6 periods. Defendants expected Plaintiffs and the other class members to record their scheduled
7 hours, rather than their actual hours worked, and mandated that any overtime be authorized in
8 advance. Plaintiffs and the other class members were also pressured and required to perform
9 daily job duties off-the-clock through systemic understaffing and an unrealistic, heavy
10 workload. In addition, during the relevant time period Defendants rounded Plaintiffs' and the
11 other class members' recorded hours in a manner that favored Defendants over Plaintiffs and
12 the other class members and resulted in a loss of time.

13 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 failed to use earned commissions/non-discretionary bonuses/non-discretionary monetary and
15 non-monetary incentives/non-discretionary production and/or performance pay/shift differentials
16 to calculate the regular rate of pay used to calculate the overtime rate for the payment of
17 overtime wages where Plaintiffs' and the other class members' earned commissions, non-
18 discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
19 discretionary production and/or performance pay, shift differentials, and overtime wages in the
20 same workweek.

21 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 failed to provide Plaintiffs and the other class members all required rest and meal periods
23 during the relevant time period as required under the Industrial Welfare Commission Wage
24 Orders and thus they are entitled to any and all applicable penalties.

25 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 failed to relieve Plaintiffs and other class members of all duties, failed to relinquish control
27 over Plaintiffs and the other class members' activities, failed to permit Plaintiffs and the other
28 class members a reasonable opportunity to take, and impeded or discouraged them from taking

thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

41. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a meal period was short, late, interrupted, and/or missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a meal period was short, late, interrupted, and/or missed. During the relevant time period, Plaintiffs and the other class members' meal periods were missed, shortened, late and/or interrupted because Defendants required them to perform work duties including, but not limited to providing customer service, making and receiving business-related calls, completing paperwork, storing and retrieving their personal belongings, and communicating with government agencies and insurers to confirm patients' insurance eligibility. Plaintiffs and the other class members were also required to work during meal breaks and impeded or discouraged from taking timely, thirty (30) minute off-duty and uninterrupted meal breaks by Defendants' policies and practices of requiring preapproval for overtime, expecting Plaintiffs and the other class members to record their scheduled hours, rather than their actual hours worked, and systemic understaffing and unrealistic heavy workload. Plaintiffs did not receive premium payments for meal periods that were not provided, and during the relevant time period Defendants had a corporate policy and practice of not paying their hourly-paid or non-exempt employees within the State of California an additional hour of pay at their regular rate of pay when a meal period was short, late, interrupted, and/or missed.

42. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to provide, authorize, and permit Plaintiffs and other class members to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten

(10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

43. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest period was short, late, interrupted, and/or missed, and they did not receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest period was short, late, interrupted, and/or missed. During the relevant time period, Plaintiffs' and the other class members' rest periods were missed, short, late and/or interrupted because Defendants required them to perform work duties during their purported rest periods, including but not limited to, providing customer service, making and receiving business-related calls, completing paperwork, storing and retrieving personal belongings, communicating with government agencies and insurers to confirm patients' insurance eligibility, assisting with administrative work, and to remain on premises. Plaintiffs and the other class members were also required to work during rest periods and impeded or discouraged from taking timely, ten (10) minute uninterrupted and off-duty rest periods by Defendants' policies and practices of requiring preapproval for overtime, expecting Plaintiffs and the other class members to record their scheduled hours, rather than their actual hours worked, and systemic understaffing and unrealistic heavy workload. Defendants failed to authorize and permit off-duty rest periods by requiring employees to remain on premises during any purported rest breaks. Plaintiffs did not receive premium payments for rest periods that were not authorized or permitted, and during the relevant time period Defendants had a corporate policy and practice of not paying their hourly-paid or non-exempt employees within the State of California an additional hour of pay at their regular rate of pay when a rest period was short, late, interrupted, and/or missed.

44. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum

1 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*,
2 Defendants' effective payment of zero dollars per hour for all hours Plaintiffs and the other
3 class members worked off-the-clock performing work duties.

4 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
5 knew or should have known that Plaintiffs and the other class members were entitled to receive
6 all wages owed to them upon discharge or resignation, including earned but unpaid overtime
7 and minimum wages and meal and rest period premiums, and they did not, in fact, receive all
8 such wages owed to them at the time of their discharge or resignation.

9 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 knew or should have known that Plaintiffs and the other class members were entitled to receive
11 all wages owed to them during their employment. Plaintiffs and the other class members did
12 not receive payment of all wages, including earned but unpaid overtime and minimum wages
13 and meal and rest period premiums, within any time permissible under California Labor Code
14 section 204.

15 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Plaintiffs and the other class members were entitled to
17 reimbursement for necessary business-related expenses, including but not limited to, the use of
18 personal phones, vehicles for business-related purposes, and badge replacement.

19 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that they had a duty to compensate Plaintiffs and the other class
21 members pursuant to California law, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiffs and the other class members that they were properly denied wages, all
24 in order to increase Defendants' profits.

25 49. During the relevant time period, Defendants failed to pay overtime wages to
26 Plaintiffs and the other class members for all overtime hours worked. Plaintiffs and the other
27 class members were required to work more than eight (8) hours per day, forty (40) hours per
28 week, and/or over six (6) consecutive days per workweek without overtime compensation for

1 all overtime hours worked, including work performed off-the-clock.

2 50. During the relevant time period, Defendants failed to use earned
3 commissions/non-discretionary bonuses/non-discretionary monetary and non-monetary
4 incentives/non-discretionary production and/or performance pay/shift differentials to calculate
5 the regular rate of pay used to calculate the overtime rate for the payment of overtime wages
6 where Plaintiffs' and the other class members' earned commissions, non-discretionary bonuses,
7 non-discretionary monetary and non-monetary incentives, non-discretionary production and/or
8 performance pay, shift differentials, and overtime wages in the same workweek.

9 51. During the relevant time period, Defendants failed to provide all requisite
10 uninterrupted meal and rest periods to Plaintiffs and the other class members.

11 52. During the relevant time period, Defendants failed to pay Plaintiffs and the other
12 class members at least minimum wages for all hours worked, including work performed off-the
13 clock.

14 53. During the relevant time period, Defendants failed to pay Plaintiffs and the other
15 class members all wages owed to them upon discharge or resignation, including earned but
16 unpaid overtime and minimum wages and meal and rest period premiums.

17 54. During the relevant time period, Defendants failed to pay Plaintiffs and the other
18 class members all wages within any time permissible under California law, including, *inter*
19 *alia*, California Labor Code section 204, including earned but unpaid overtime and minimum
20 wages and meal and rest period premiums.

21 55. During the relevant time period, Defendants failed to reimburse Plaintiffs and
22 the other class members for all necessary business-related expenses and costs, including but
23 not limited to, the use of personal phones for business-related purposes and vehicles for traveling
24 between clinic locations for business-related purposes. During the relevant time period,
25 Defendant also had a policy and practice regarding badge replacement that required Plaintiffs
26 and the other class members to incur necessary business-related expenses and costs without
27 being fully reimbursed.

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56. During the relevant time period, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to California law in order to increase Defendants' profits.

57. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

58. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 57, and each and every part thereof with the same force and effect as though fully set forth herein.

59. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

60. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants working more than eight (8) hours in a day, more than forty (40) hours in a workweek, and/or over six (6) consecutive days per workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day, more than forty (40) hours in a workweek, and/or over six (6) consecutive days per workweek.

61. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

62. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours

1 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
2 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
3 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
4 of work.

5 63. During the relevant time period, Plaintiffs and the other class members worked
6 in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess
7 of six (6) consecutive days in a workweek including performing work duties off-the-clock
8 including, but not limited to, being on-call, making and receiving business-related calls and
9 messages, providing customer service, storing and retrieving personal belongings,
10 communicating with government agencies and insurers to confirm patients' insurance
11 eligibility, completing paperwork, cleaning work station and surrounding lobby-area, reading
12 and responding to e-mails, registering patients, scheduling appointments, business-related
13 travel, and responding to business-related inquiries.

14 64. During the relevant time period, Defendants intentionally and willfully failed to
15 pay overtime wages owed to Plaintiffs and the other class members. Plaintiffs and the other
16 class members did not receive overtime compensation at one-and-one-half times the regular
17 hourly rate for all hours spent performing job duties in excess of eight (8) hours in a day, over
18 forty (40) hours in a week and/or over six (6) consecutive days per workweek.

19 65. Defendants' failure to pay Plaintiffs and the other class members the unpaid
20 balance of overtime compensation, as required by California laws, violates the provisions of
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22 66. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
23 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
24 attorneys' fees.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 226.7 and 512(a))**

3 **(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)**

4 67. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
5 through 66, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 68. At all relevant times, the IWC Wage Orders and California Labor Code sections
8 226.7 and 512(a) were applicable to Plaintiffs' and the other class members' employment by
9 Defendants.

10 69. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any meal or rest period mandated by an
12 applicable order of the California IWC.

13 70. At all relevant times, the applicable IWC Wage Order and California Labor
14 Code section 512(a) provide that an employer may not require, cause, or permit an employee to
15 work for a work period of more than five (5) hours per day without providing the employee
16 with a meal period of not less than thirty (30) minutes, except that if the total work period per
17 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
18 consent of both the employer and employee.

19 71. At all relevant times, the applicable IWC Wage Order and California Labor
20 Code section 512(a) further provide that an employer may not require, cause or permit an
21 employee to work for a work period of more than ten (10) hours per day without providing the
22 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
23 that if the total hours worked is no more than twelve (12) hours, the second meal period may
24 be waived by mutual consent of the employer and the employee only if the first meal period
25 was not waived.

26 72. During the relevant time period, Plaintiffs and the other class members who
27 were scheduled to work for a period of time no longer than six (6) hours, and who did not
28 waive their legally-mandated meal periods by mutual consent, were required to work for

1 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
2 (30) minutes and/or rest period.

3 73. During the relevant time period, Plaintiffs and the other class members who
4 were scheduled to work for a period of time in excess of six (6) hours were required to work
5 for periods longer than five (5) hours without an uninterrupted meal period of not less than
6 thirty (30) minutes and/or rest period.

7 74. During the relevant time period, Plaintiffs' and the other class members' meal
8 periods were missed, shortened, late, and/or interrupted because Defendants required them to
9 perform work duties including, but not limited to, providing customer service, making and
10 receiving business-related calls, storing and retrieving personal belongings, communicating
11 with government agencies and insurers to confirm patients' insurance eligibility, completing
12 paperwork, and responding to business-related inquiries.

13 75. As a result, Defendants failed to relieve Plaintiffs and the other class members of
14 all duties, failed to relinquish control over Plaintiffs' and the other class members' activities,
15 failed to permit Plaintiffs and the other class members a reasonable opportunity to take, and
16 impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later
17 than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take
18 second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for
19 shifts lasting more than ten (10) hours.

20 76. During the relevant time period, Defendants intentionally and willfully required
21 Plaintiffs and the other class members to work during meal periods and failed to compensate
22 Plaintiffs and the other class members the full meal period premium for work performed during
23 meal periods.

24 77. During the relevant time period, Defendants failed to pay Plaintiffs and the other
25 class members the full meal period premium due pursuant to California Labor Code section
26 226.7.

27 78. Defendants' conduct violates applicable IWC Wage Order and California Labor
28 Code sections 226.7 and 512(a).

79. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

81. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

82. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

83. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

84. During the relevant time period, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

85. During the relevant time period, Plaintiffs' and the other class members' rest periods were missed, short, late and/or interrupted because Defendants required them to perform work duties during their purported rest periods, including, but not limited to,

1 providing customer services, registering patients, reviewing records, storing and retrieving
2 personal belongings, communicating with government agencies and insurers to confirm
3 patients' insurance eligibility, scheduling, making business-related calls and answering
4 business-related calls and messages, remaining on-duty, and assisting with administrative
5 work.

6 86. As a result, Defendants failed to provide, authorize, or permit Plaintiffs and the
7 other class members to take a full, uninterrupted, off-duty rest period for every shift lasting
8 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
9 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
10 permit, and provide such rest breaks in the middle of each work period.

11 87. During the relevant time period, Defendants willfully required Plaintiffs and the
12 other class members to work during rest periods and failed to pay Plaintiffs and the other class
13 members the full rest period premium for work performed during rest periods.

14 88. During the relevant time period, Defendants failed to pay Plaintiffs and the other
15 class members the full rest period premium due pursuant to California Labor Code section
16 226.7.

17 89. Defendants' conduct violates applicable IWC Wage Orders and California
18 Labor Code section 226.7.

19 90. Pursuant to the applicable IWC Wage Orders and California Labor Code section
20 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one
21 additional hour of pay at the employees' regular hourly rate of compensation for each work
22 day that the rest period was not provided.

23 **FOURTH CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

25 **(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)**

26 91. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
27 through 90, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

1 92. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
2 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
3 than the minimum so fixed is unlawful.

4 93. During the relevant time period, Defendants failed to pay minimum wage to
5 Plaintiffs and the other class members as required, pursuant to California Labor Code sections
6 1194, 1197, and 1197.1.

7 94. During the relevant time period, Plaintiffs and the other class members were
8 required to perform job duties off-the-clock, including, but not limited to, being on-call,
9 receiving business-related calls and messages, providing customer service, storing and
10 retrieving personal belongings, communicating with government agencies and insurers to
11 confirm patients' insurance eligibility, completing paperwork, cleaning the work stations and
12 lobby, business-related travel to and from clinic locations, registering patients, scheduling
13 appointments, and responding to business-related inquiries.

14 95. During the relevant time period, Plaintiffs and the other class members were not
15 compensated at the minimum wage for the time they spent performing job duties off the clock.

16 96. Defendants' failure to pay Plaintiffs and the other class members the minimum
17 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
18 those sections Plaintiffs and the other class members are entitled to recover the unpaid balance
19 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

21 97. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
22 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
23 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
24 minimum wages.

25 98. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
26 members are entitled to recover liquidated damages in an amount equal to the wages
27 unlawfully unpaid and interest thereon.

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FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

99. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 98, and each and every part thereof with the same force and effect as though fully set forth herein.

100. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

101. During the relevant time period, Plaintiffs and the other class members were required to perform job duties off-the-clock, including, but not limited to, being on-call, receiving business-related calls and messages, providing customer service, storing and retrieving personal belongings, communicating with government agencies and insurers to confirm patients' insurance eligibility, completing paperwork, business-related travel to and from other clinic locations, registering patients, scheduling appointments, and responding to business-related inquiries.

102. During the relevant time period, Plaintiffs and the other class members were not compensated at the minimum wage for the time they spent performing job duties off the clock.

103. During the relevant time period, Plaintiffs and the other class members were not paid overtime wages owed to them for all the time they spent performing job duties off the clock in excess of eight (8) hours in a day, or forty (40) hours in a week, and/or over six (6) consecutive days per workweek.

104. During the relevant time period, Plaintiffs and the other class members' meal periods were missed, short, late, and/or interrupted because Defendant required them to

1 perform work duties, including, but not limited to, providing customer service, making and
2 receiving business-related calls, communicating with government agencies and insurers to
3 confirm patients' insurance eligibility, completing paperwork, and responding to business-related
4 inquiries.

5 105. During the relevant time period, Plaintiffs and the other class members' rest
6 periods were missed, short, late, and/or interrupted because Defendant required them to
7 perform work duties, including, but not limited to, providing customer services, registering
8 patients, reviewing records, determining insurance eligibility, communicating with government
9 agencies and insurers to confirm patients' insurance eligibility, scheduling, making business-
10 related calls and answering business-related calls and messages, storing and retrieving personal
11 belongings, being on-duty, and assisting with administrative work.

12 106. During the relevant time period, Plaintiffs and the other class members were not
13 paid the full meal period premium for work performed during meal periods, which were due
14 pursuant to California Labor Code section 226.7.

15 107. During the relevant time period, Plaintiffs and other class members were not
16 paid the full rest period premium for work performed during rest periods, which were due
17 pursuant to California Labor Code section 226.7.

18 108. As a result, during the relevant time period, Plaintiffs and the other class
19 members did not receive all of their wages, earned and unpaid, within seventy-two (72) hours
20 of leaving Defendants' employ.

21 109. During the relevant time period, Defendants intentionally and willfully failed to
22 pay Plaintiffs and the other class members who are no longer employed by Defendants their
23 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

24 110. Defendants' failure to pay Plaintiffs and the other class members who are no
25 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
26 of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and
27 202.

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111. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then 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 is commenced; but the wages shall not continue for more than thirty (30) days.

112. Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

113. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 112, and each and every part thereof with the same force and effect as though fully set forth herein.

114. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

115. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

116. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

117. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members all wages due to them, within any time period permissible under California Labor Code section 204. Plaintiffs and the other class members are

entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

118. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 117, and each and every part thereof with the same force and effect as though fully set forth herein.

119. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

120. Defendants have intentionally and willfully failed to provide Plaintiffs and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to, the failure to include the total number of hours worked by Plaintiffs and the other class members.

121. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected rights.

122. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

123. Plaintiffs and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

124. Plaintiffs and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

125. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 124, and each and every part thereof with the same force and effect as though fully set forth herein.

126. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

127. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other class members.

128. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiffs and the other class members have suffered injury and damage to their statutorily-

protected rights.

129. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

130. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 129, and each and every part thereof with the same force and effect as though fully set forth herein.

131. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

132. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including the use of personal phones business-related purposes and vehicles for traveling between clinic locations for business-related purposes. During the relevant time period, Defendant also had a policy and practice regarding badge replacement that required Plaintiffs and the other class members to incur necessary business-related expenses and costs without being fully reimbursed.

133. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs.

134. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

135. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 134, and each and every part thereof with the same force and effect as though fully set forth herein.

136. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

137. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

138. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 2800 and 2802.

139. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

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140. Plaintiffs and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

141. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences March 7, 2015; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against COMMUNICARE HEALTH CENTERS and DOES 1 through 100)

142. Plaintiff RIOS incorporates by reference the allegations contained in paragraphs 1 through 141, and each and every part thereof with the same force and effect as though fully set forth herein.

143. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

144. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

145. Plaintiff RIOS and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

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Failure to Pay Overtime

146. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

147. Defendants' failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

148. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

149. Defendants' failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

150. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

151. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

152. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair

activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

153. Defendants' failure to keep complete and accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

154. Defendants' failure to reimburse necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

155. Pursuant to California Labor Code section 2699, Plaintiff RIOS, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

156. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

157. Further, Plaintiff RIOS is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiffs PEREZ and PADILLA, individually, and on behalf of other members of the general public similarly situated, and Plaintiff RIOS, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs PEREZ and PADILLA, individually, and on behalf of other members of the general public similarly situated, and Plaintiff RIOS, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first eight causes of action;
2. That Plaintiffs be appointed as the representatives of the Class as to the first eight causes of action;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class

members.

As to the First Cause of Action

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

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

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

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

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;

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

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

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

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

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

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and the other class members no longer employed by Defendants;

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

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiffs and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiffs and the other class members;

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

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

- 1 40. For actual, consequential and incidental losses and damages, according to proof;
- 2 41. For statutory penalties pursuant to California Labor Code section 226(e);
- 3 42. For injunctive relief to ensure compliance with this section, pursuant to
- 4 California Labor Code section 226(h); and
- 5 43. For such other and further relief as the Court may deem just and proper.

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

7 44. That the Court declare, adjudge and decree that Defendants violated California

8 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records

9 for Plaintiffs and the other class members as required by California Labor Code section

10 1174(d);

- 11 45. For actual, consequential and incidental losses and damages, according to proof;
- 12 46. For statutory penalties pursuant to California Labor Code section 1174.5; and
- 13 47. For such other and further relief as the Court may deem just and proper.

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15 **As to the Ninth Cause of Action**

16 48. That the Court declare, adjudge and decree that Defendants violated California

17 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other

18 class members for all necessary business-related expenses as required by California Labor

19 Code sections 2800 and 2802;

- 20 49. For actual, consequential and incidental losses and damages, according to proof;
- 21 50. For the imposition of civil penalties and/or statutory penalties;
- 22 51. For reasonable attorneys' fees and costs of suit incurred herein; and
- 23 52. For such other and further relief as the Court may deem just and proper.

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

25 53. That the Court declare, adjudge and decree that Defendants violated California

26 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the

27 other class members all overtime compensation due to them, failing to provide all meal and

28 rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to

1 Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members'
2 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
3 California Labor Code sections 2800 and 2802.

4 54. For restitution of unpaid wages to Plaintiffs and all the other class members and
5 all pre-judgment interest from the day such amounts were due and payable;

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

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

12 57. For injunctive relief to ensure compliance with this section, pursuant to
13 California Business and Professions Code sections 17200, et seq.; and

14 58. For such other and further relief as the Court may deem just and proper.

15 **As to the Eleventh Cause of Action**

16 59. For civil penalties and wages pursuant to California Labor Code sections
17 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor
18 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197,
19 1197.1, 1198, 2800 and 2802; and

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

22
23 Dated: June 28, 2022

LAWYERS for JUSTICE, PC

24
25 By: _____



26 Edwin Aiwanian
27 Joanna Ghosh
28 Annabel Blanchard
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On June 28, 2022, I served the foregoing document(s) described as: **FOURTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698 ET SEQ.** on interested parties in this action as follows:

Brandon R. McKelvey (brandon@medinamckelvey.com)
Alexander M. Medina (alex@medinamckelvey.com)
Timothy B. Nelson (tim@medinamckelvey.com)

MEDINA MCKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678

Attorneys for Defendant CommuniCare Health Centers

[X] BY E-MAIL

The above-referenced documents were transmitted to the person(s) at the e-mail addresses listed herein by agreement of the person(s) listed at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Web URL:

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

[X] BY ONLINE SUBMISSION

The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 28, 2022, at Glendale, California.


Manuel Martinez