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Assigned for All Purposes
Judge Glenda Sanders

Attorneys for Plaintiff, JERMAINE SWIFT, an individual and on
behalf of all others similarly situated and/or aggrieved,

CX-101

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

JERMAINE SWIFT, an individual and on
behalf of all others similarly situated and/or
aggrieved,

Plaintiffs,

v.

ABILITIES OC, a California corporation;
REBEKAH HAYES, an individual; JACLYN
PERSSON, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 30-2021-01191832-CU-OE-CXC

CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. CIVIL PENALTIES UNDER LABOR CODE § 558;
12. CIVIL PENALTIES UNDER LABOR CODE § 1174.5;
13. CIVIL PENALTIES UNDER LABOR CODE § 1197.1; and
14. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JERMAINE SWIFT (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and/or aggrieved (collectively, “Plaintiffs”), and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against ABILITIES OC (“Abilities OC”), REBEKAH HAYES (“Hayes”), JACLYN PERSSON (“Persson”), and any of their respective subsidiaries or affiliated companies within the State of California (Abilities OC, Hayes, and Persson are collectively hereinafter referred to as “Abilities OC”) and, with DOES 1 through 100, as further defined below, referred to as “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to pay overtime and minimum wages, to provide meal and rest breaks or compensation in lieu thereof, to provide employees the opportunity to inspect employment records, pay timely wages during employment and at the time of employment separation, provide uniform deposits and interest thereon, comply with Labor Code section 2810.5, comply with Labor Code section 203, comply with Labor Code section 226, comply with Labor Code section 227.3, comply with Labor Code section 246, *et seq.*, comply with Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff JERMAINE SWIFT is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed

1 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, personally
2 attending to adults with disabilities, including feeding, bathing, dressing, supervising and generally
3 caring for adults with disabilities. Plaintiff is informed and believes, and based thereon alleges that
4 Plaintiff JERMAINE SWIFT worked for Defendants from approximately January of 2020 through
5 approximately April of 2020.

6 **B. Defendants**

7 4. Plaintiff is informed and believes and based thereon alleges that defendant Abilities
8 OC is, and at all times relevant hereto was, a corporation organized and existing under and by virtue
9 of the laws of the State of California and doing business in, among other places, the County of
10 Orange, State of California. At all relevant times herein, defendant Abilities OC employed Plaintiff
11 and similarly situated and aggrieved employees within the State of California.

12 5. Plaintiff is informed and believes and based thereon alleges that defendant Abilities
13 OC is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17 and Cal.
14 Bus. & Prof. Code § 17201.

15 6. Plaintiff is informed and believes and based thereon alleges that defendant Hayes is,
16 and at all times relevant hereto was, an individual residing California, as well as the principal, owner,
17 officer, director and/or managing agent for Abilities OC and DOES 1 through 100, as further defined
18 below. Plaintiff is further informed and believes and based thereon alleges that Hayes violated, or
19 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
20 violation of Labor Code section 558.1.

21 7. Plaintiff is informed and believes and based thereon alleges that defendant Persson
22 is, and at all times relevant hereto was, an individual residing California, as well as the principal,
23 owner, officer, director and/or managing agent for Abilities OC and DOES 1 through 100, as further
24 defined below. Plaintiff is further informed and believes and based thereon alleges that Persson
25 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
26 provisions in violation of Labor Code section 558.1.

27 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,

1 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
2 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
3 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
4 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
5 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
6 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
7 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
8 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
9 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
10 include Abilities OC, Hayes, Persson, and any of their parent, subsidiary, or affiliated companies
11 within the State of California, as well as DOES 1 through 100 identified herein.

12 **JOINT LIABILITY ALLEGATIONS**

13 9. Plaintiff is informed and believes and based thereon alleges that all the times
14 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
15 representative, joint venture or co-conspirator of each of the other defendants, either actually or
16 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
17 employment, joint venture, and conspiracy.

18 10. All of the acts and conduct described herein of each and every corporate defendant
19 was duly authorized, ordered, and directed by the respective and collective defendant corporate
20 employers, and the officers and management-level employees of said corporate employers. In
21 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
22 their said employees, agents, and representatives, and each of them; and upon completion of the
23 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
24 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
25 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
26 aforementioned corporate employees, agents and representatives.

27 11. Plaintiff is further informed and believes and based thereon alleges that Hayes and
28 Persson violated, or caused to be violated, the above-referenced and below-referenced Labor Code

1 provisions in violation of Labor Code section 558.1.

2 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
3 unity of interest and ownership between and among Defendants, and each of them, that their
4 individuality and separateness have ceased to exist.

5 13. Plaintiff is informed and believes, and based thereon alleges that despite the
6 formation of the purported corporate and/or limited liability existence of Abilities OC, and DOES 1
7 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
8 with Hayes, Persson, and DOES 51 through 100 (“Individual Defendants”), and each of them, due
9 to, but not limited to, the following reasons:

- 10 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
11 Defendants who personally committed the wrongful and illegal acts and violated the
12 laws as set forth in this Complaint, and who has hidden and currently hide behind the
13 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
14 other wrongful or inequitable purpose;
- 15 B. The Individual Defendants derive actual and significant monetary benefits by and
16 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
17 Defendants as the funding source for the Individual Defendants’ own personal
18 expenditures;
- 19 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
20 and the Alter Ego Defendants, while really one and the same, were segregated to
21 appear as though separate and distinct for purposes of perpetrating a fraud,
22 circumventing a statute, or accomplishing some other wrongful or inequitable
23 purpose;
- 24 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
25 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
26 mentioned herein were, so mixed and intermingled that the same cannot reasonably
27 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
28 are, and at all relevant times mentioned herein were, used by the Individual

1 Defendants as mere shells and conduits for the conduct of certain of their, and each
2 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
3 herein were, the alter egos of the Individual Defendants;

4 E. The recognition of the separate existence of the Individual Defendants and the Alter
5 Ego Defendants would promote injustice insofar that it would permit defendants to
6 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
7 Code, and other statutory violations. The corporate existence of these defendants
8 should thus be disregarded in equity and for the ends of justice because such
9 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

10 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
11 Defendants (and vice versa), and the fiction of their separate corporate existence
12 must be disregarded;

13 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
14 thereon alleges that Defendants, and each of them, are joint employers.

15 **JURISDICTION**

16 15. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
17 of Civil Procedure section 410.10.

18 16. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
19 sections 392, *et seq.* because, among other things, Orange County is where the causes of action
20 complained of herein arose; the county in which the employment relationship began; the county in
21 which performance of the employment contract, or part of it, between Plaintiffs, or some of them,
22 and Defendants was due to be performed; the county in which the employment contract, or part of
23 it, between Plaintiffs, or some of them, and Defendants was actually performed; and the county in
24 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
25 effect on Plaintiffs and Class Members in Orange County, and because Defendants employ
26 numerous Class Members in Orange County and the State of California.

27 17. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
28 Defendants during the applicable statutory period and suffered one or more of the Labor Code

1 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
2 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
3 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
4 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
5 employees of Defendants during the Civil Penalty Period.

6 18. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
7 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
8 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
9 PAGA allegations described herein is not required.

10 19. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
14 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

15 20. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
16 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
17 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
18 specified in Labor Code section 2699.3.

19 21. On or around January 11, 2021, Plaintiff provided written notice pursuant to Labor
20 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
21 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
22 as well as by certified mail, with return receipt requested to Defendants, and each of them.

23 22. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
24 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
25 calendar days of the January 11, 2021 postmarked date of the herein-described notice sent by
26 Plaintiff to the LWDA and Defendants.

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FACTUAL BACKGROUND

23. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff, Class Members, and other aggrieved employees working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, twelve (12) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave work late without being able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working and/or suffering under Defendants' control to attend to patients and/or Defendants' work-related requests, to clock out for rest periods, to don and doff uniforms, medical equipment and/or safety equipment off the clock, to attend company meetings off the clock, to make or respond to telephone calls and/or text messages off the clock; to drive off the clock and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show lesser hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff, Class Members, and Aggrieved Employees.

24. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff, Class Members and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a

1 result of, among other things, at times, failing to accurately track and/or pay for all minutes actually
2 worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or
3 permitting employees to work off the clock, including, without limitation, by requiring employees:
4 to come early to work and leave work late without being able to clock in for all that time, to suffer
5 under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before
6 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
7 working and/or suffering under Defendants' control to attend to patients and/or Defendants' work-
8 related requests, to clock out for rest periods, to don and doff uniforms, medical equipment and/or
9 safety equipment off the clock, to attend company meetings off the clock, to make or respond to
10 telephone calls and/or text messages off the clock; to drive off the clock and/or go through security
11 screenings and/or temperature checks off the clock; detrimental rounding of employee time entries;
12 editing and/or manipulation of time entries to show lesser hours than actually worked; failing to pay
13 all reporting time pay; and failing to pay split shift premiums, to the detriment of Plaintiff, Class
14 Members, and Aggrieved Employees.

15 25. For at least four (4) years prior to the filing of this Action and continuing to the
16 present, Defendants have, at times, failed to provide Plaintiff, Class Members and Aggrieved
17 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
18 which they worked more than five (5) hours in a work day and a second thirty (30) minute
19 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day,
20 including, without limitation: by interrupting meal periods; not providing timely meal periods;
21 failing to provide first and second meal periods; providing short meal periods; requiring that
22 employees carry cellular telephones or walkie-talkies during meal periods; not permitting
23 employees to leave the premises; otherwise requiring on-duty/on-call meal periods, including,
24 without limitation, on-duty meal periods when they were not necessary to meet regulatory or
25 approved program standards, Plaintiff, Class Members and Aggrieved Employees, or some of them,
26 did not eat with residents during residents' meals and/or Defendants did not provide the same meal
27 provided to residents to Plaintiff, Class Members and/or Aggrieved Employees at no charge; failing
28 to provide or obtain signed on-duty meal period agreements that explicitly permit Plaintiff, Class

1 Members, and Aggrieved Employees to revoke the on-duty meal period agreements; and auto-
2 deducting meal periods that could not be auto-deducted by law or during which employees worked,
3 and failing to provide compensation for such unprovided meal periods as required by California
4 wage and hour laws.

5 26. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendants have, at times, failed to authorize and permit Plaintiff, Class Members and
7 Aggrieved Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4)
8 hours worked or major fraction thereof in which they are completely relieved of all of their duties,
9 including, without limitation: by failing to provide rest periods all together; requiring that they be
10 bundled together and/or with meal periods; interrupting them; requiring that employees carry
11 cellular telephones or walkie-talkies during rest periods; not providing them in a timely fashion; not
12 permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods,
13 and failed to provide compensation for such unprovided rest periods as required by California wage
14 and hour laws.

15 27. For at least three (3) years prior to the filing of this action and continuing to the
16 present, Defendants have, at times, failed to pay Plaintiff, Class Members and Aggrieved
17 Employees, or some of them, the full amount of their wages owed to them upon termination and/or
18 resignation as required by Labor Code sections 201 and 202.

19 28. At all relevant times herein, Defendants had and have a policy or practice of failing
20 to pay Plaintiff, Class Members, and Aggrieved Employees their paid time off and vacation time
21 owed upon separation of employment as wages at their final rate of pay in violation of Labor Code
22 section 227.3 and applicable Wage Orders.

23 29. For at least one (1) year prior to the filing of this Action and continuing to the present,
24 Defendants have, at times, failed to furnish Plaintiff, Class Members and Aggrieved Employees, or
25 some of them, with itemized wage statements that accurately reflect gross wages earned; total hours
26 worked; net wages earned; all deductions; all applicable hourly rates in effect during the pay period
27 and the corresponding number of hours worked at each hourly rate; the name(s) and address(es) of
28 the legal entity(ies) that is/are the employer(s); and other such information as required by Labor

1 Code section 226, subdivision (a). As a result thereof, Defendants have further failed to furnish
2 employees with an accurate calculation of gross and gross wages earned, as well as gross and net
3 wages paid.

4 30. For at least three (3) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to indemnify Plaintiff, Class Members and Aggrieved
6 Employees, or some of them, for their mileage and/or gas costs incurred by them in driving their
7 personal vehicles for work-related purposes; for costs incurred in purchasing uniforms, providing
8 uniform and other deposits, separately laundering mandatory uniforms, for the purchase of medical
9 and/or safety equipment, and for the purchase and maintenance of cellular phones and cellular phone
10 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
11 of Defendants, as required by Labor Code section 2802, and other statutory and common law
12 offenses.

13 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of preventing Plaintiff, Class Members and/or Aggrieved Employees from using or disclosing the
15 skills, knowledge and experience they obtained at Defendants for purposes of competing with
16 Defendants, including, without limitation, preventing Employees from disclosing their wages in
17 negotiating a new job with a prospective employer, and from disclosing who else works at
18 Defendants and under what circumstances that they might be receptive to an offer from a rival
19 employer. Plaintiff is informed and believes that this policy and/or practice violates Business and
20 Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of
21 the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

22 32. Defendants had and have a policy or practice of preventing Plaintiff, Class Members
23 and/or other Aggrieved Employees from disclosing violations of state and federal law, either within
24 Defendants to their managers or outside to private attorneys or government officials, among others,
25 in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code
26 section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described
27 policies and/or practices prevent Plaintiff, Class Members, and/or other Aggrieved Employees from
28 disclosing information about unsafe or discriminatory working conditions, or about wage and hour

1 violations in violation of Labor Code section 232 and 232.5.

2 33. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, and on behalf
3 of Aggrieved Employees, pursuant to Business and Professions Code sections 17200 through 17208,
4 also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and
5 requiring the establishment of appropriate and effective means to prevent further violations, as well
6 as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members
7 are entitled, as well as restitution of amounts owed.

8 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
10 accurate time records including wage statements and similar payroll documents under Labor Code
11 section 226, intentionally failing to furnish Plaintiff and other Aggrieved Employees with
12 documents signed to obtain or hold employment under Labor Code section 432, personnel records
13 under Labor Code section 1198.5, and time records under Labor Code section 1174, making it
14 difficult for Plaintiff and other Aggrieved Employees to calculate their unpaid wages and/or
15 premium payments, to the detriment of Plaintiffs and other Aggrieved Employees.

16 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
18 that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
19 paid for between the 16th and 26th day of the month during which the labor was performed, and
20 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
21 for between the 1st and 10th day of the following month."

22 36. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
24 Protection Act of 2011) by, among other things, failing to provide Plaintiff and Aggrieved
25 Employees with the rates of pay and overtime rates of pay applicable to their employment;
26 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
27 name, address, and telephone number of the workers' compensation insurance carrier; information
28

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
2 under Labor Code section 2810.5.

3 37. At all relevant times mentioned herein, Defendants occasionally failed to provide
4 Plaintiff and Aggrieved Employees with the amount of paid sick leave required to be provided
5 pursuant to California law and also did not permit its use upon request as contemplated under
6 California laws, to the detriment of Plaintiff and Aggrieved Employees.

7 38. Plaintiff, on his own behalf and on behalf of Class Members and Aggrieved
8 Employees, brings this action pursuant to, including but not limited to, Labor Code sections 96,
9 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 510,
10 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.1, 1197.5, 1198.5, 2699,
11 2802, 2810.5, and California Code of Regulations, Title 8, section 11050, seeking overtime wages,
12 minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely
13 wages, waiting time penalties, wage statement penalties, reimbursement for expenses incurred in
14 furtherance of work duties, failure to pay interest on deposits made, penalties, other such provisions
15 of California law, and reasonable attorneys' fees and costs.

16 **CLASS ACTION ALLEGATIONS**

17 39. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
18 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
19 and former non-exempt employees of Defendants within the State of California at any time
20 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
21 of the class action is provided to the class (collectively referred to as "Class Members").

22 40. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
23 to amend or modify the class description with greater specificity, further divide the defined class
24 into subclasses, and to further specify or limit the issues for which certification is sought.

25 41. This action has been brought and may properly be maintained as a class action under
26 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
27 of interest in the litigation and the proposed Class is easily ascertainable.

28 ///

1 **A. Numerosity**

2 42. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff is informed and believes that there are at least forty (40) Class Members
5 employed by Defendants within the State of California.

6 43. Accounting for employee turnover during the relevant periods necessarily increases
7 this number. Plaintiff alleges Defendants' employment records would provide information as to the
8 number and location of all Class Members. Joinder of all members of the proposed Class is not
9 practicable.

10 **B. Commonality**

11 44. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
14 minutes worked at a proper overtime rate of pay?
- 15 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by engaging,
16 suffering, or permitting employees to work off the clock?
- 17 C. Did Defendants violate Labor Code sections 510 and 1194 by failing to include all
18 forms of remuneration into the regular rate of pay for the pay periods where overtime
19 was worked and the additional compensation was earned for the purpose of
20 calculating the overtime rate of pay?
- 21 D. Did Defendants violate Labor Code sections 510, 1194 and 1197 through the
22 detrimental rounding of employee time entries?
- 23 E. Did Defendants violate Labor Code sections 510, 1194 and 1197 by editing and/or
24 manipulation of time entries to show lesser hours than actually worked?
- 25 F. Did Defendants violate Labor Code sections 510 and 1194 by paying straight pay
26 instead of overtime pay to the detriment of Class Members?
- 27 G. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
28 for all other time worked at the employee's regular rate of pay and a rate of pay that

1 is greater than the applicable minimum wage?

2 H. Did Defendants violate Labor Code sections 1194 and 1197 by failing to pay
3 reporting time pay?

4 I. Did Defendants violate Labor Code sections 1194 and 1197 by failing to pay split
5 shift premiums?

6 J. Did Defendants violate Labor Code section 512 by not authorizing or permitting
7 Class Members to take compliant meal periods?

8 K. Did Defendants violate Labor Code section 226.7 by not providing Class Members
9 with additional wages for missed or interrupted meal periods?

10 L. Did Defendants violate applicable Wage Orders by not authorizing or permitting
11 Class Members to take compliant rest periods?

12 M. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed rest periods?

14 N. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
15 Members upon termination or resignation all wages earned?

16 O. Are Defendants liable to Class Members for waiting time penalties under Labor Code
17 section 203?

18 P. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
19 Class Members with accurate wage statements?

20 Q. Did Defendants fail to pay Class Members in a timely fashion as required under
21 Labor Code section 204?

22 R. Did Defendants fail to indemnify Class Members for all necessary expenditures or
23 losses incurred in direct consequence of the discharge of their duties or by obedience
24 to the directions of Defendants as required under Labor Code section 2802?

25 S. Did Defendants fail to return deposits made by Class Members with accrued interest
26 thereon as required under Labor Code section 404?

27 T. Did Defendants violate the Unfair Competition Law, Business and Professions Code
28 section 17200, *et seq.*, by their unlawful practices as alleged herein?

1 U. Are Class Members entitled to restitution of wages under Business and Professions
2 Code section 17203?

3 V. Are Class Members entitled to costs and attorneys' fees?

4 W. Are Class Members entitled to interest?

5 **C. Typicality**

6 45. The claims of Plaintiff herein alleged are typical of those claims which could be
7 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
8 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
9 damages arising out of and caused by Defendants' common course of conduct in violation of laws
10 and regulations that have the force and effect of law and statutes as alleged herein.

11 **D. Adequacy of Representation**

12 46. Plaintiff will fairly and adequately represent and protect the interest of Class
13 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
14 hour class actions.

15 **E. Superiority of Class Action**

16 47. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
18 questions of law and fact common to Class Members predominate over any questions affecting only
19 individual Class Members. Class Members, as further described therein, have been damaged and
20 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
21 violation of the Labor Code at times, as set out herein.

22 48. Class action treatment will allow Class Members to litigate their claims in a manner
23 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
24 any difficulties that are likely to be encountered in the management of this action that would
25 preclude its maintenance as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay Overtime Wages – Against All Defendants)**

3 49. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 50. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
7 Wage Orders.

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

12 52. At all times relevant to this Complaint, Labor Code section 510 further provided that
13 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
14 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
15 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
16 pay.”

17 53. Four (4) years prior to the filing of the Complaint in this Action through the present,
18 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
19 than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty
20 hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
21 overtime wages for all hours worked as a result of, including but not limited to, Defendants failing
22 to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;
23 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
24 by requiring employees: to come early to work and leave work late without being able to clock in
25 for all that time, to suffer under Defendants’ control due to long lines for clocking in, to complete
26 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
27 and continue working and/or suffering under Defendants’ control to attend to patients and/or
28 Defendants’ work-related requests, to clock out for rest periods, to don and doff uniforms, medical

1 equipment and/or safety equipment off the clock, to attend company meetings off the clock, to make
2 or respond to telephone calls and/or text messages off the clock; to drive off the clock and/or go
3 through security screenings and/or temperature checks off the clock; failing to include all forms of
4 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms
5 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
6 additional compensation was earned for the purpose of calculating the overtime rate of pay;
7 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
8 lesser hours than actually worked, and for paying straight pay instead of overtime pay, to the
9 detriment of Plaintiff and Class Members.

10 54. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
11 than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek,
12 and/or seven (7) straight workdays without properly compensating overtime wages at the proper
13 overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code,
14 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

15 55. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
16 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
17 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
18 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

19 **SECOND CAUSE OF ACTION**

20 **(Failure to Pay Minimum Wages – Against All Defendants)**

21 56. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 57. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

25 58. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
26 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
27 Defendants' control.

28 59. For four (4) years prior to the filing of the Complaint in this Action through the

1 present, Defendants failed, at times, to accurately track and/or pay for all minutes actually worked
2 at Plaintiff and/or Class Members' regular rate of pay that is above the minimum wage; engaged,
3 suffered, or permitted employees to work off the clock, including, without limitation, by requiring
4 employees: to come early to work and leave work late without being able to clock in for all that
5 time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift
6 tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and
7 continue working and/or suffering under Defendants' control to attend to patients and/or
8 Defendants' work-related requests, to clock out for rest periods, to don and doff uniforms, medical
9 equipment and/or safety equipment off the clock, to attend company meetings off the clock, to make
10 or respond to telephone calls and/or text messages off the clock; to drive off the clock and/or go
11 through security screenings and/or temperature checks off the clock; detrimentally rounded
12 employee time entries; edited and/or manipulated employee time entries to show lesser hours than
13 actually worked; failed to pay all reporting time pay; and failed to pay split shift premiums, to the
14 detriment of Plaintiff and Class Members.

15 60. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
16 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
17 for all hours worked or otherwise due.

18 61. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
19 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
20 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
21 damages, reasonable attorneys' fees and costs of suit.

22 **THIRD CAUSE OF ACTION**

23 **(Failure to Provide Meal Periods – Against All Defendants)**

24 62. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 63. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

28 64. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall

1 employ an employee for a work period of more than five (5) hours without a timely meal break of
2 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
3 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
4 per day without providing the employee with a second timely meal period of not less than thirty (30)
5 minutes in which the employee is relieved of all of his or her duties.

6 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
7 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
8 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
9 of compensation for each workday that the meal period is not provided.

10 66. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
12 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
13 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
14 Class Member's regular rate of compensation on the occasions that Class Members were not
15 provided compliant meal periods.

16 67. By their failure to provide Plaintiff and Class Members compliant meal periods as
17 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
18 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
19 violated the provisions of Labor Code section 512 and applicable Wage Orders.

20 68. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
21 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
22 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

23 69. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
24 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
25 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
26 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Rest Periods – Against All Defendants)**

3 70. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 71. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by applicable Wage Orders.

7 72. California law and applicable Wage Orders require that employers “authorize and
8 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
9 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
10 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
11 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
12 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
13 thirty (30) minutes of paid rest period.

14 73. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
15 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
16 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
17 regular rate of compensation for each work day that the rest period is not provided.

18 74. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
20 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
21 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
22 Member’s regular rate of compensation on the occasions that Class Members were not authorized
23 or permitted to take compliant rest periods.

24 75. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
25 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s
26 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
27 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

28 76. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have

1 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
2 owed for rest periods that they were not authorized or permitted to take.

3 77. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
4 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
5 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
6 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

7 **FIFTH CAUSE OF ACTION**

8 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

9 78. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth hereat.

11 79. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
13 Wage Orders.

14 80. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
15 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
16 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
17 discharge immediately upon termination. Class Members who resigned were entitled to payment
18 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
19 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
20 unpaid at the time of resignation.

21 81. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
22 years before the filing of the Complaint in this Action through the present, Defendants, due to the
23 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
24 Members all wages earned prior to resignation or termination in accordance with Labor Code
25 sections 201 or 202.

26 82. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
27 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
28 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff

1 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
2 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
3 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
4 or resignation.

5 83. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
6 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
7 resignation, until paid, up to a maximum of thirty (30) days.

8 84. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
10 prior to termination or resignation.

11 85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
12 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
13 waiting time penalties, interest, and their costs of suit, as well.

14 **SIXTH CAUSE OF ACTION**

15 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

16 86. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 87. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

20 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
21 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
22 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
23 wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the
25 legal entity(ies) that is/are the employer(s), among other things.

26 89. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
27 before the filing of the Complaint in this Action through the present, Defendants failed to comply
28 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their

1 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
2 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
3 all deductions; all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate; and the name(s) and address(es) of the legal entity(ies)
5 that is/are the employer(s), among other things.

6 90. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
7 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
8 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
9 provided wage statements that Defendants knew were not accurate.

10 91. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
11 suffered injury. The absence of accurate information on Class Members' wage statements at times
12 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
13 mathematical computations to determine the amount of wages owed; causes difficulty and expense
14 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
15 about wages and amounts deducted from wages to state and federal governmental agencies, among
16 other things.

17 92. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
18 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
19 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
20 pay period, not to exceed an aggregate \$4,000.00 per employee.

21 93. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
22 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
23 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
24 attorneys' fees, and costs of suit.

25 **SEVENTH CAUSE OF ACTION**

26 **(Violation of Labor Code § 2802 – Against All Defendants)**

27 94. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

95. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

96. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .”

97. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; costs incurred in purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of medical equipment and/or safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans.

98. During that time period, Plaintiff is informed and believes, and based thereon alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class Members for those losses and/or expenditures.

99. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the herein-described losses and/or expenditures.

100. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

101. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

102. Plaintiff is informed and believes, and based thereon alleges that the unlawful

1 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
2 and Professions Code section 17200. Due to their unlawful business practices in violation of the
3 Labor Code, Defendants have gained a competitive advantage over other comparable companies
4 doing business in the State of California that comply with their obligations to compensate employees
5 in accordance with the Labor Code.

6 103. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
7 Members have suffered injury in fact and lost money or property.

8 104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
9 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
10 Code and requiring the establishment of appropriate and effective means to prevent further
11 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
12 including interest thereon, in which they had a property interest and which Defendants nevertheless
13 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
14 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
15 by their failure to comply with the Labor Code.

16 105. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
17 Procedure section 1032 and interest under Civil Code section 3287.

18 **NINTH CAUSE OF ACTION**

19 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

20 106. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
21 incorporates each by reference as though fully set forth hereat.

22 107. At all relevant times, Plaintiff, Class Members, and Aggrieved Employees were
23 employees or former employees of Defendants covered by Labor Code section 204 and applicable
24 Wage Orders.

25 108. At all relevant times herein, Labor Code section 204, requires and required that:
26 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
27 between the 16th and 26th day of the month during which the labor was performed, and labor
28 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for

1 between the 1st and 10th day of the following month.”

2 109. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
3 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
4 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
5 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
6 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2)
7 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
8 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

9 110. At all relevant times herein, Defendants have had a consistent policy or practice of
10 failing to pay Plaintiff, Class Members, and/or Aggrieved Employees during their employment on
11 a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff,
12 Class Members, and other Aggrieved Employees are entitled to recover civil penalties for
13 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
14 each Class Member and Aggrieved Employee for each initial violation per employee, and two
15 hundred dollars (\$200) for each Class Member and Aggrieved Employee for each subsequent
16 violation in connection with each payment that was made in violation of Labor Code section 204,
17 plus 25 percent of the amount unlawfully withheld.

18 111. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
19 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
20 interest, and their costs of suit, as well.

21 **TENTH CAUSE OF ACTION**

22 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

23 112. Plaintiff realleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs as though fully set forth hereat.

25 113. Defendants had and have a policy or practice of failing to comply with Labor Code
26 section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage
27 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
28 deductions; all applicable hourly rates in effect during the pay period and the corresponding number

1 of hours worked at each hourly rate; the legal name(s) and address(es) of the legal entity(ies) that
2 is/are the employer(s); and other such information as required by Labor Code section 226,
3 subdivision (a).

4 114. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
5 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
6 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
7 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
8 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

9 115. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
10 this section are in addition to any other penalty provided by law.”

11 116. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
12 and have a policy or practice of failing to furnish non-exempt employees, including, without
13 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
14 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
15 corresponding number of hours worked at each hourly rate in effect during the pay period; the
16 name(s) and address(es) of the legal entity(ies) that is/are the employer(s); and other such
17 information as required by Labor Code section 226, subdivision (a).

18 117. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
19 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
20 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
21 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
22 period for each subsequent violation.

23 **ELEVENTH CAUSE OF ACTION**

24 **(Civil Penalties Under Labor Code § 558 – Against All Defendants)**

25 118. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth hereat.

27 119. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
28 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating

hours and days of work in any order of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- b. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- c. Wages recovered pursuant to this section shall be paid to the affected employee.”

120. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during their employment and after their employment separation; receive accurate, itemized wage statements; to be reimbursed for work expenses; be provided with the opportunity to inspect employment records; be provided with the proper accrual and use of paid sick leave; and be provided with notice as required under Labor Code section 2810.5.

121. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount 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.

TWELFTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 1174.5 – Against All Defendants)

122. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

123. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the

1 employees of the Division of Labor Standards Enforcement free access to the place of business or
2 employment of the person to secure any information or make any investigation that they are
3 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
4 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
5 or papers of the person.”

6 124. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
7 every person employing labor in California to “[k]eep a record showing the names and addresses of
8 all employees employed and the ages of all minors.”

9 125. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
10 every person employing labor in California to “[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
13 piece rate paid to, employees employed at the respective plants or establishments. These records
14 shall be kept in accordance with rules established for this purpose by the commission, but in any
15 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
16 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
17 earned.”

18 126. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
19 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
20 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
21 member of the commission or employees of the division to inspect records pursuant to subdivision
22 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

23 127. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
24 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
25 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
26 inspection of records as required by Labor Code subdivision (b).

27 128. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Civil Penalties Under Labor Code § 1197.1 – Against All Defendants)**

5 129. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth hereat.

7 130. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
8 person acting either individually or as an officer, agent, or employee of another person, who pays
9 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
10 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
11 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
12 Section 203 as follows:

- 13 i. For any initial violation that is intentionally committed, one hundred dollars
14 (\$100) for each underpaid employee for each pay period for which the employee
15 is underpaid. This amount shall be in addition to an amount sufficient to recover
16 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
17 applicable penalties imposed pursuant to Section 203.
- 18 ii. For each subsequent violation for the same specific offense, two hundred fifty
19 dollars (\$250) for each underpaid employee for each pay period for which the
20 employee is underpaid regardless of whether the initial violation is intentionally
21 committed. This amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
23 applicable penalties imposed pursuant to Section 203.
- 24 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to
25 Section 203, recovered pursuant to this section shall be paid to the affected
26 employee.”

27 131. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
28 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without

1 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' wages for all hours
2 actually worked at their regular rate of pay that is above the minimum wage; engaging suffering, or
3 permitting employees to work off the clock, including, without limitation, by requiring employees:
4 to come early to work and leave work late without being able to clock in for all that time, to suffer
5 under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before
6 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
7 working and/or suffering under Defendants' control to attend to patients and/or Defendants' work-
8 related requests, to clock out for rest periods, to don and doff uniforms, medical equipment and/or
9 safety equipment off the clock, to attend company meetings off the clock, to make or respond to
10 telephone calls and/or text messages off the clock; to drive off the clock and/or go through security
11 screenings and/or temperature checks off the clock; detrimental rounding of employee time entries;
12 editing and/or manipulation of time entries to show lesser hours than actually worked; failing to pay
13 all reporting time pay; and failing to pay split shift premiums.

14 132. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
17 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
18 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
19 subsequent violation.

20 **FOURTEENTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

22 133. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs as though fully set forth hereat.

24 134. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
25 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
26 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
27 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself or herself and other current or former

employees pursuant to the procedures specified in Labor Code section 2699.3.

135. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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.

136. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment and after employment separation; provide employees the opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave; paying employees all owed paid time off and vacation time owed by separation at the proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

137. Moreover, Plaintiff and other aggrieved current and former employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

DEMAND FOR JURY TRIAL

138. Plaintiff demands a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff, Class Members, and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

A. An order certifying this case as a Class Action;

B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's

- 1 counsel as class counsel;
- 2 C. Damages for all wages earned and owed, including minimum and overtime wages
- 3 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 4 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 5 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 6 among other Labor Code sections, 512, 558.1 and 226.7;
- 7 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 8 subdivision (e) and 558.1;
- 9 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 10 I. Damages under Labor Code sections 2802 and 558.1;
- 11 J. Damages under Labor Code section 404;
- 12 K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 13 1174.5, 1197.1, and 2699;
- 14 L. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 15 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699;
- 16 M. Preliminary and permanent injunctions prohibiting Defendants from further
- 17 violating the California Labor Code and requiring the establishment of appropriate
- 18 and effective means to prevent future violations;
- 19 N. Restitution of wages and benefits due which were acquired by means of any unfair
- 20 business practice, according to proof;
- 21 O. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 22 P. For attorneys' fees in prosecuting this action;
- 23 Q. For costs of suit incurred herein; and

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1 R. For such other and further relief as the Court deems just and proper.

2 Dated: March 24, 2021

J. GILL LAW GROUP, P.C.

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BY: 

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JASMIN K. GILL

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Attorneys for Plaintiff JERMAINE SWIFT, an
individual and on behalf of all others similarly situated
and/or aggrieved

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